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PRACTICE OF APPELLATE JUDGES IN REACHING CONCLUSIONS ON ORIGINAL RESEARCH AND INDEPENDENT REASONING.—Some weeks ago we called attention to the fact that American case law was evidencing an increasing lack of authoritative reasoning seeming to follow the growing tendency among courts and lawyers to rely more on authority than on principle. Outside of the United States Supreme Court, however, to which of course this rule does not apply, there are some notable exceptions to this rule, among the judges of certain state appellate tribunals. Conspicuous examples among others that might be mentioned, are Justice John S. Wilkes, of the Supreme Court of Tennessee and Justice Thomas A. Sherwood of the Supreme Court of Missouri.

The chief characteristics of Justice Wilkes are his unusual independence of the authorities on difficult and important questions, and the peculiar clearness and force of his logic, depending very little, if at all, on any brilliancy of rhetoric. His commendable practice of reasoning out the solution of a difficult case from the basic principles of the law has led him into positions absolutely contrary to the accepted weight of authority in other states. Two notable instances of this will be found in the cases of Wilcox v. Hines, 100 Tenn. 538, and Sibley v. State (1901), 64 S. W. Rep. 703, 54 Cent. L. J. 124. In the first case one of the most settled rules in the law of landlord and tenant was overturned in holding a landlord liable for not disclosing to the tenant a hidden defect not only of which he has knowledge, but of which he could have *informed* himself by the exercise of reasonable care. This case was before the Supreme Court of Tennessee three times, and hotly contested, but the majority of the court stood firm in maintaining the rule just announced, and Justice Wilkes, in a magnificent opinion sweeps away the criticism of annotators and critics of the first opinion in that case, and shows conclusively the absolute reasonableness on principle of the rule sought to be maintained. In the second case, the court held that a statute seeking to protect the fish in a river by prohibiting the erection of dams and requiring fishways to be constructed in all existing dams was unconstitutional and void. In this position the Supreme Court of Tennessee stands alone facing a strong array of decisions, which shows how tenaciously the courts cling to some obsolete rule of the common law in spite of changed conditions practically destroying any reason for it. It is evident from these cases and others that Justice Wilkes believes very strongly in the maxim that "the reason of the law is the life of the law,"—a maxim which seems to have fallen into "inoccuous desuetude" if we can judge from the briefs of some counsel and the opinions of some courts. Neither have questions of expediency and harshness any weight with Justice Wilkes. In the recent and important case of State v. Insurance Company, 106 Tenn. 282, he held that a foreign insurance company could evade the payment of a privilege tax on premium receipts by withdrawing its local office from the state and making its premiums payable at the home office, although it still solicited business in the state. Justice Wilkes said: "It is said that this view will operate harshly upon domestic companies and such foreign companies as continue to issue policies and to do an active business in the state. In other words, that a company may come into the state and write a large number of risks, then withdraw and collect its premiums in another state, and thus escape taxation while it receives the protection of the laws of the state. It is true such condition of affairs might arise, but we cannot decide the question before us upon any consideration of expediency or public policy, but upon a proper construction and application of the law as we find it."

While Justice Sherwood is commended more frequently for his eloquence and beautiful rhetoric, he is nevertheless possessed in a marked degree of that independence of reasoning that is so truly characteristic of a great jurist. A judge must, of all men, be confident in his own opinions and in his own ability to reason. While the great majority of men may desire or be willing that other men should think for them, the jurist must

do his own thinking and reach his own conclusions. Otherwise error, which is the commonest fault of the human mind, would flourish flagrant and undetected throughout the land. In fact it sometimes vitiates the decisions of the highest courts themselves, and in such places is most dangerous, and should not be tolerated. In this regard the words of Justice Sherwood are interesting: "Error is not sacred; it has no vested right to exist; and it becomes us as *men* certainly as *judges* wherever error is discovered for the first time, to confess and to forsake it at the earliest opportunity. Prov. xxviii., 13." See Straus v. Railroad, 86 Mo. 421, 437. As a dissenter Justice Sherwood occupies a position of curious pre-eminence. Exceptional, not only because of the number of his dissenting opinions, but because of the fact that he based his dissent so ably and so forcibly on the reasons of the law that in many cases in which the same questions came subsequently before the court, his views have been adopted and the former decisions overruled. Justice Sherwood has been thirty years on the supreme bench of Missouri, and it has been through the latter half of his incumbency in office that he has seen the fruit of his earlier unsuccessful efforts to impress his opinions upon the court. One of his earliest and strongest dissenting opinions is to be found in the case of Polston v. See, 54 Mo. 291, which held that in cases of libel where truth was pleaded in justification, the defendant must establish his charge beyond a reasonable doubt. In characteristic language Justice Sherwood worded his dissent in part as follows: "It is conceived that, wherever this doctrine has received the sanction of the courts of this country, two elements will be found in the error which conduced to such result. First, that of blindly following English precedents, oblivious of the *reasons* which gave them origin; second, that of confounding together, and regarding as identical, the *same kind* and the *same degree* of proof. Under the operation of the English rule in those states where it has been adopted, A may sue B for the crime of burning his house, and may recover upon testimony which is sufficient in other civil cases. But if A is so unguarded as to state that B did such criminal act, and B sues him, he will be mulcted in damages, if not able to establish beyond 'a reasonable doubt' that B had committed the crime of arson. Surely such *chameleon like* changes in the rules of evidence, where the same facts are involved, do not comport with the dignity of the law as a science, nor with the proper administration of justice." This position was taken in the face of a "great weight of authority," but was subsequently vindicated and adopted in the case of Edwards v. Knapp, 97 Mo. 432, which overruled the former decision. Probably the most important opinion of Justice Sherwood was that rendered in the now celebrated and leading case of State v. Associated Press, 159 Mo. 410, decided Jan. 25, 1901, in which it was held, contrary to the decisions in other states, that the Associated Press was not a monopoly and that its news reports were private property with regard to which it had the right to contract without interference. In this case Justice Sherwood criticises very severely the celebrated case of Munn v. Illinois, 94 U. S. 113, and shows clearly the illogical foundation on which it rests. The opinion is a splendid exhibition of judicial reasoning.

We have given these two instances to illustrate the meaning of our former editorial entitled—"Reliance Upon Principle Rather than Upon Authority—The Proper Rule for Courts and Lawyers." 54 Cent. L. J. 101. We insist so strongly on this matter because of the tendency of courts and lawyers, with the great mass of authorities at command, to rely upon these alone and to neglect the principles of the law, and thus fail to detect the errors that are bound to occur in such hurriedly prepared and ill advised decisions. Error cannot be permitted to intrench itself behind any "weight of authority," and its most deadly enemy is the lawyer or jurist qualified by a thorough knowledge of the principles of the law, and possessed of sufficient acuteness and daring to detect it and strip it of its covering.

NOTES OF IMPORTANT DECISIONS.

INSANE PERSONS—INSANITY AS A DEFENSE TO AN ACTION TO RECOVER DAMAGES.—Is insanity a defense to an action to recover damages for a wrong independent of contract? Students of law will think it strange that this question was not settled at a very early period of the history of England, but the Supreme Court

of New Zealand in the recent case of Donaghy v. Brennan, 19 New Zealand Law Rep. 289, could find nothing precisely in point in any reported decision of the English courts. The action was to recover damages for assaulting the plaintiff by shooting him with a gun. The defense was that, at the time of the commission of the act, the defendant was a lunatic and of unsound mind, and by reason of his mental disease, unconscious of, and wholly unable to understand, the nature and consequences of the act which he was doing. At the trial, the judge directed the jury that before finding the defendant a lunatic they must be satisfied that he was laboring under a disease of the mind to such an extent as to render him incapable of understanding the nature and quality of the act and of knowing that it was wrong. The jury found that the defendant was a lunatic and of unsound mind at the time of the assault, and assessed the damages at £750. The defendant moved for judgment on the finding of the jury, and it was argued on his behalf that the injury done to the plaintiff could not be distinguished from an unavoidable accident, and that in a case of doubtful principle reference might be made to the Roman law, by which in an action for a tort the defendant would only be liable if he was in the exercise of reason and could distinguish between right and wrong, and which the real cause of the injury was the defendant's insanity, which disabled him from controlling his impulse to commit violence. The argument for the plaintiff was mainly founded on the American decisions. These are summed up in Williams v. Hays, 42 Amer. St. Rep. 743, where it is said by Earl, J.: "The general rule is that an insane person is just as responsible for his torts as a sane person, and the rule applies to all torts except, perhaps, those in which malice and, therefore, intention, actual or implied, is a necessary ingredient, like libel, slander, or malicious prosecution." The plaintiff's counsel also cited the following passage in the English case of Weaver v. Ward (Hobart, 134): "If a lunatic kill a man or the like, this is no felony, because felony must be done *animo felonico*, yet in trespass, which tends only to give damages according to hurt or loss, it is not so, and, therefore, if a lunatic hurt a man, he shall be answerable in trespass, and, therefore, no man shall be excused of a trespass except it be judged utterly without his fault." The learned judge, Conolly J., having decided in favor of the plaintiff, the defendant appealed to the supreme court, and that court (Stout, C. J., and Williams, Edward, and Martin, JJ.) affirmed the decision holding the defendant liable.—*Solicitor's Journal.*

LIFE INSURANCE—PLEA OF INFANCY AGAINST FORFEITURE BECAUSE OF FRAUDULENT WARRANTY OF MINOR.—Quite an interesting decision is that rendered in the recent case of O'Rourke v. Hancock Mutual Life Insurance Co., 50 Atl. Rep. 834, where the Supreme Court of Rhode Island holds that an infant is not bound, by his warranties in an application for life insurance, and that the insurer cannot defend an action on the policy by proving their falsity. The court further holds that while ordinarily a plea of infancy is a privilege personal to the infant, a beneficiary in a policy on the life of an infant may plead infancy in answer to the company's defense. The court assigns the reason for the latter holding to be that otherwise an infant's contract of insurance would be in effect binding on him during his minority.

That an infant is not liable for warranties or representations, is well sustained by authority. West v. Moore, 14 Vt. 447; Insurance Co. v. Noyes, 32 N. H. 345; Freeman v. Boland, 14 R. I. 39, 51 Am. Rep. 340; Doran v. Smith, 49 Vt. 353. And this rule applies whether the minor's contract is set up offensively or defensively. Derocher v. Continental Mills, 58 Me. 217. In this case a minor had agreed to work for he defendant for six months at least, and to give no less than two weeks' notice before leaving. He left within six month, and without giving such notice, and the question was whether the defendant could deduct the damages occasioned thereby from what he would otherwise be entitled to recover from his labor. The court held that no deduction could be made, saying: "To compel the minor thus to make good the loss occasioned by a non-performance of his contract is virtually to enforce the contract, and thus to enforce the contract is, in effect, to abrogate the rule of law that a minor is not bound by his contract."

In this case, however, the defendant argues that the answer of infancy is a privilege personal to him, and that it cannot be taken advantage of by any one else. "Undoubtedly" the court says, "this is a general rule, but its chief application is for the protection of the infant in cases where an adult seeks to avoid his contract upon that ground, when the contract has not been disaffirmed by the infant. To apply the rule in this case would amount to holding the contract good during the minority of the infant, because, the policy being on his life, no suit could be brought upon it until after his death. He could only disaffirm it by refusing to pay premiums, and thus forfeiting the policy. If after majority he should continue to pay premiums, he might be regarded as having affirmed the contract, as in Morrill v. Aden, 19 Vt. 505. Our conclusion is that during the minority of the applicant his warranties cannot be set up in defense to a suit upon the policy."

THE CASE AGAINST JURY TRIALS IN CIVIL ACTIONS.

The time for the careful consideration of the wisdom of trial by jury, in civil proceedings, has now been reached. In criminal cases, the jurors have but one question

to decide, viz.: the guilt or innocence of the accused, and it is possible that the employment of a jury for this purpose, may, at present, be the most desirable method of reaching a conclusion. The questions involved in the majority of civil cases are far more intricate and technical.

The jury system exists chiefly in the United States, in Great Britain, and in countries under British control. Instead of being the usual method of determining matters of fact among the enlightened nations of the world, it is the exceptional method. It has not been adopted by the nations of continental Europe, although such countries as Germany, France and Switzerland, have attained a high degree of civilization, and are engaged in most of the numerous industries of the age, both commercial and agricultural. As a result, the controversies in their courts are as varied, and as complicated, as are those of the English-speaking world, where trial by jury is the almost universal custom; and as they are apt to arouse the same passions, as well as to excite the same prejudices, they demand an equal knowledge of the practical affairs of life. Continental Europe, however, appears to have found no need for the jury system, in spite of its operation for centuries in the neighboring country of Great Britain, and for a full century in the United States. Moreover, it is undeniable that nearly all the nations of continental Europe, which have adopted the process of trial by jury in criminal cases, have rejected the characteristic of unanimity, which is considered of paramount importance in the Great Republic, and in the British Isles. This condition shows that trial by jury is not essential to the decision of important questions of fact, and it also furnishes some evidence that it is not the best method, otherwise it would, in all probability, have been incorporated in the judicial systems of all nations.

The absence of experience in the functions of a legal tribunal, under which most jurors necessarily labor, is of itself a complete disqualification for dealing with cases of an involved character, such as those which occupy a great part of the time of the courts. Any case containing a complication of facts, with contradictory evidence, requires both natural sagacity, and the habit of weighing and comparing conflicting arguments and rejecting plausible fallacies. The latter qualities are beyond the capacity of men of mediocre education, who, in a vast number of instances, never decided a case before, and who, as might be expected, are often unable to agree upon a verdict. Upon the other hand, it not infrequently happens that when they have succeeded in coming to an agreement, they have drawn wrong conclusions from the evidence, and the injured party is compelled to incur the expense and delay of asking the courts to order a new trial.

The judge, seeing the bewilderment of the jury, occasionally indicates what the verdict ought to be, but most judges are very reluctant to do this, lest they be charged with usurping functions, reserved for the twelve "good men and true." But, if decisions of injuries are to be, in reality, the decision of the judge, or, if they are to be revised, when erroneous, by an appeal to a higher court, what object can there be in putting litigants to the trouble, delay and expense of a jury trial?

The law proclaims its distrust of juries by denying them the right belonging to every other judicial body of deciding their differences by a majority, and by exacting a unanimous decision. In effect, it says that the verdict of a jury, unlearned in the law, must be valueless, unless all twelve jurors agree, while the decision of a majority of judges, who are trained lawyers, is sufficient to determine the most complicated questions of law that reach the courts.

The assertion, so often heard, that jurors are better fitted than judges to decide all matters of fact, is not correct. A verdict is supposed to be the result of reasoning. The power to reason accurately is not possessed in a higher degree by farmers, by mechanics, or by storekeepers, than by judges, who are usually men of ability and learning, whose previous education and training peculiarly fit them for the task. There may be some cases, in which, owing to rules of trade, or other unusual circumstances, more within the knowledge of laymen than lawyers, the decision of the former would be, of the two, the more correct. But, what is needed in these cases, is not twelve men utterly ignorant of the technical questions before the

court, but one skilled assessor, to aid the judges. Even if a jury be considered essential in such a case as the one described, that is not a valid argument in favor of trial by jury in all cases.

Jurors are not required merely to decide the disputed facts, they are required to decide them according to the law and the evidence. It is an error to suppose that all that is necessary in order to do this is to listen to the testimony and to receive the propositions of law from the court, with such assistance as may be derived from the argument of the lawyers, who, in this state (New York), are usually permitted to tell the jury anything they choose, whether it is in the evidence or not. When the jurors have listened to the speeches of counsel, and the charge of the judge, they have only commenced their work; their most difficult duties are yet to be performed. They are now expected to weigh all the testimony which they have heard, and thoroughly analyze it. To do so, properly and profitably, conflicting assertions must be reconciled, where reconcilement is possible, and where it is impossible a wise discrimination must be exercised in selecting from this testimony whatever seems most worthy of credence.

From the mass of evidence—often from a maze of contradictions—the facts which establish the truth must be extracted; and to accomplish this successfully, there ought to be a clear understanding of the points at issue. If these various steps are executed in a thorough manner, a demand is made upon the reasoning faculties to a greater degree than the intellect of the average man is accustomed; and while it may not absolutely necessitate mental training and discipline in similar work, yet such training will be of great assistance, in arriving at correct conclusions. It is obvious that the man who has had a wide experience of trials in court; who, as a part of his profession, has been compelled to listen to the testimony of witnesses, and to carefully consider, not only their testimony, but their demeanor while on the witness stand; whose mind, both by education and experience, has become trained to logical process of thought, and to ready detection of fallacies in the arguments that are addressed to him upon the testimony, is far better able to arrive at an accurate determination of the issues involved than is the man who has no experience, and no such training.

But the jurors' duties are not yet concluded. When he has weighed and sifted the evidence respecting the truth of the matter of fact at issue, a function of paramount importance and serious difficulty remains to be exercised. He must now apply the law, as given him by the judge, to the facts. To do this intelligently often requires much clear-thinking and a more-than-ordinary exercise of the reasoning faculties, for the instructions of the court are often numerous, as well as lengthy; some of them, in addition, are likely to involve more than one proposition. Moreover, however lucid the judge's charge may be, it is very difficult for minds unfamiliar with legal principles to apply the law to the facts. In a vast number of instances, instructions are not mere directions to the jury that if they find the facts to be so and so, to give a verdict for plaintiff or defendant. Upon the other hand, they are quite frequently a series of legal propositions, one having its bearing upon another; and, when this is so, it is not only necessary that the whole series, but also that each separate instruction, in its relationship to another, and to the whole, should be clearly comprehended.

If the jurors need the guidance of the disciplined mind of an impartial judge in the matter of weighing the testimony in order to extract the truth from it, and also in the application of the law relating to the case to their finding of the facts, their incompetence for the duties required of them can hardly be denied. Under the jury system, where the charge by the presiding judge is recognized as essential to the proper performance of the functions of the jurors, it must be regarded as an anomaly in the very constitution of things that the judge shall be considered incompetent or unfit to reach a decision upon the facts, and yet shall be recognized as fully competent to deal with all the more difficult matters essential to the reaching of that decision; capable of acting as guide to the jurors through all the numerous obstacles and intricacies that attend their duties; competent to point out to them how to arrive at a correct conclusion, yet incompetent even to express his own opinion,

much less to give a verdict. The judge, as a result of his vocation, and of the experience he obtains upon the bench, as well as by reason of his previous training and that habit of mind which the exercise of judicial functions begets, is less susceptible to improper appeals to either prejudice or sympathy, and is more alert to hinder the introduction in argument of extraneous matters than a jury is likely to be.

The unnecessary employment of juries to try cases which could be better and more rapidly disposed of by a single judge, or by two or three judges, is one of the chief causes of the delay and expense of legal proceedings. A part of the few and precious hours during which the court sits is consumed in calling the jury, in hearing various excuses for unwillingness to serve as jurors, in disposing of challenges, and, at last, in swearing the jury; but a far greater waste of time takes place in trying to make a case of any difficulty intelligible to men of little education, such as are usually found as jurors, and in the efforts of learned counsel to delude them, to work upon their prejudices, to enlist their sympathies and to win their verdict. After the counsel on both sides have finished, the judge is required to go over the ground again carefully, partly to undo what the lawyers have done, and partly to make sure that the jurors understand the law and the evidence. The effect of all this repetition is that innumerable cases occur which a judge could decide in a few hours, but which, when tried by a jury, occupy several days.

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UNFAIR TRADE—RIGHT TO CONSPIRE TO INJURE THE BUSINESS OF OTHERS.

WEST VIRGINIA TRANSP. CO. v. STANDARD OIL CO.

Supreme Court of Appeals of West Virginia.

One may, without liability, in furtherance of his own interest in the competition of business, establish any works competing with another, and may induce customers of that other to withdraw their patronage from him, in order to obtain business for himself, though it injure, and is intended to injure, that other person's business, if there is no contract between such person and his customers. The motive of the person so doing, though malicious, is not material, his acts being lawful. But if he induce such withdrawal of custom not in *bona fide* neighborly advice, nor in free right of competition to benefit his own business, but wantonly only to injure that other person, he is liable to action. What one may do thus, several, with same justification, may combine to do.

BRANNON, J.: The West Virginia Transportation Company brought trespass on the case in Wood county against the Standard Oil Company and the Eureka Pipe Line Company, all corporations, and upon demurrer to the declaration judgment was rendered for the defendants. The first count of the declaration charges that the plaintiff was engaged in the business of transporting from Volcano and vicinity to Parkersburg, and petroleum oils by means of pipe lines and tank cars in storing oil, and had expended $300,000 in acquiring land, rights of way, lines of tubing, and other things necessary in its business, and had built up a large and lucrative business, and that the defendants, maliciously and wickedly contriving and intending to injure the plaintiff and ruin its business, and render its plant and property worthless, and deprive it of all its business, did confederate and conspire together and with the West Virginia Oil Company, another corporation, and with C. H. Shattuck and other persons unknown to the plaintiff, to prevent all persons producing, refining, selling, or transporting oils, and particularly to prevent the plaintiff from transporting oils through its pipe lines and by means of its tank cars, and from storing oil in its storage tanks, and from executing any lawful trade in connection therewith. And it charged also that the Standard Oil Company of New Jersey organized about 1891, was the successor of all corporations and firms prior to that date associated together under a contract known as the Standard Oil Trust; that the Camden Consolidated Oil Company was a member of the said trust, and under its control; that in 1892 the business and property of said trust were reorganized under, and are now controlled by the Standard Oil Company, and controlled by the same men formerly owning and controlling said Standard Oil Trust; that the Eureka Pipe Line Company is owned, controlled, and operated by the same men, and doing business in the interest of the Standard Oil Company, and is a transportation branch of that company; that the West Virginia Oil Company was organized about 1885 to purchase and operate what was known as the property of the West Virginia Oil & Land Company, a territory on which the plaintiff had laid pipe lines, and from which it had for several years transported oil for compensation; that the Standard Oil Trust, through individuals interested in it, had become a large stockholder in the West Virginia Oil Company, and dictated its management; and by means thereof, and of its monopoly of the production, refining and transportation of oil throughout the world, practically controlled the business of said West Virginia Oil Company, and since the reorganization of the Standard Oil Trust by the organization of the Standard Oil Company had continued to do so, and had induced the construction of the Eureka Pipe Line Company, and thus ruined the busi-

ness of the plaintiff; that this was the object and accomplishment of the said combination and malicious conspiracy.

That a monopoly, a huge corporation, or associate corporations, to establish vast business and derive profits therefrom, to the great detriment—the practical ruin—of the plaintiff and others in like business is charged in the first count; but that is not enough. It must appear that this monopolistic business hurt the plaintiff. But that even will not do; it must harm it by doing unlawful things. Not only must the plaintiff have a right, but that right must be injured by the defendants, and injured, too, by unlawful means, by acts which the defendants had no right to do. You must establish that the defendants owed a duty to the plaintiff, and broke that duty to make an actionable tort. There can be no tort unless there is a duty from one to another, and that duty broken. You must set this down as a test of tort: "A legal right must be invaded in order that an action of tort may be maintained. The mere fact that a complainant may have suffered damage of the kind which the law recognized is not enough. There must also be a violation of a duty recognized by law. In the language of the civil law mere *damnum* is not enough; there must also be *injuria;* that is, '*Ex damno absque injuria non oritur actio.*'" 1 Jag. Torts, 87. We must nicely distinguish between *damnum* and *injuria.* We commonly use the words "injury" and "damage" indiscriminately, but in the rule above these Latin words are distinct. "*Damnum*" means only harm, hurt, loss, damage; while "*injuria*" comes from "in," against, and "*jus*," right, and means something done against the right of the party, producing damage, and has no reference to the fact or amount of damage. Unless a right is violated, though there be damage, it is *damnum absque injuria.* Such is the case under the first count of the declaration. The plaintiff had a perfect right to operate its business. So had the defendants the right to operate theirs. They both had right to compete for business. There is no right better established under the law of business than the right of trade competition. Steamship Co. v. McGregor, 21 Q. B. Div. 544, 23 Q. B. Div. 598 (see note below); Huttley v. Simmons [1898], 1 Q. B. Div. 181. These companies were owned by the same men. Their interests were common,—one buying, refining, and selling oil: the other transporting it. I mean the defendant companies. Had they not a right to work together to promote the common interest? Even to conspire to draw to themselves from other competitors business, so they did no unlawful act? The count charges an arrangement designed to form a monopoly to control or dominate the business of purchasing, producing, refining, and selling oil. Every one has a right to enlarge his business, even though by means of greater capital, superior facilities and capacity he monopolize business and injure competitors. If the business is lawful, so that it violate no state law, even if it overshadow others, who can prevent it in a free country of constitutional law? The constitutions of the state and union say that there shall be liberty. This includes the right to carry on legitimate business, as much as the right to be exempt from illegal imprisonment of body. State v. Goodwill, 33 W. Va. 179, 181, 10 S. E. Rep. 285, 6 L. R. A. 621, 25 Am. St. Rep. 863, and note. Is there too much liberty in America? If so, blame these constitutions. And corporations fall under the protection of the clause of the constitutions referred to. Their legal rights are protected the same as those of natural persons. Railroad Co. v. Gibbes, 142 U. S. 386, 12 Sup. Ct. Rep. 255, 35 L. Ed. 1051. If the state allows them to do business (and it is only citizens doing business in the name of corporations), how can it withhold from them the right of doing competitive business? If the legislature, under the great police power, can restrict the right to associate persons and their means and intellects in the transaction of lawful business, so as to protect other less favored competitors, and so far as it can constitutionally do so, it must be left to it to do so; but until it does so the individual cannot complain. The very minute these aggregations conspire to do acts harmful to the state,—that is, the general public,—to raise or depress prices of necessary things, or to restain trade, they fall under the power of the state; but the mere operation by lawful means of lawful business, however hurtful to individuals, is not actionable. It may cause damage, but it is damage without violation of right. The very minute the man or corporation in the operation of business does an act which is both unlawful and hurtful to another, violative of his right, the wrongdoer is liable to action; but if his act is lawful, he is not liable. This first count charges malicious conspiracy, but, if the act is lawful, that matters not. "When the question at issue is whether one person has suffered legal wrong at the hands of another, the good or bad motive which influenced the action complained of is generally of no importance whatever. What was said in the opening chapter of this work—that the exercise by one man of his legal right cannot be a legal wrong to another—has been abundantly shown to be justified by the authorities, even if it were not in itself a mere truism. An act which does not amount to a legal injury cannot be actionable because done with a bad intent. Any transaction which would be lawful and proper if the parties were friends cannot be made the foundation for an action merely because they happen to be enemies. As long as a man keeps himself within the law by doing no act which violates it, we must leave his motive to Him who searches the heart. To state the point in a few words, whatever one has a right to do another cannot have a right to complain of." Cooley, Torts, 688, 830. "If one be removed by malice to the exercise of a legal right, no action arises." Raycroft v. Tayntor, 68 Vt. 219, 35 Atl. Rep. 53,

33 L. R. A. 225, 54 Am. St. Rep. 882. "A lawful act is not actionable, though it proceed from malicious motives." Iron Co. v. Uhler, 75 Pa. 467, 15 Am. Rep. 599. This is strongly illustrated in Frazier v. Brown, 12 Ohio St. 294, where a farmer dug a hole cutting off underground water accustomed to percolate and ooze through his land to the land of a neighbor, and it was held he was not liable, though he did the act with malice; the motive was immaterial, as he had right to use his land as he pleased. See many cases cited in Chipley v. Atkinson (Fla.), 1 South. Rep. 934, 11 Am. St. Rep. 370; Phelps v. Nowlen, 72 N. Y. 39, 28 Am. Rep. 93; Payne v. Railroad Co., 13 Lea, 507, 49 Am. Rep. 666; Chambers v. Baldwin, 91 Ky. 121, 15 S. W. Rep. 57, 11 L. R. A. 550, 34 Am. St. Rep. 165.

What wrongful acts does this first count state? The formation of trade combination—call it "monopoly"—is not actionable alone. How far the grant of exclusive privilege by the state (and this is the only monopoly, legally speaking) is valid when its right is contested, is one thing. We are not dealing with that. This monopoly is not that. It is the act of persons and corporations, by union of means and effort, drawing to themselves, in the field of competition, the lion's share of trade. This is not monopoly condemned by law. The lion has stretched out his paws and grabbed in prey more than others, but that is the natural right of the lion in the field of pursuit and capture. Pity that the lion exists, his competing animals may say; but natural law accords the right, it is given him by the Maker for existence. The state made the Standard Oil Company, and gave it this right of being and working. Better for its competitors were it not so. What other acts besides the formation of this engrossing association does the first count charge? That it caused the West Virginia Oil Company to build a pipe line from its property to the Baltimore & Ohio Railroad to ship its oil to the refinery of the Standard Oil Company. Stockholders in the one were also in the other. Had they not the right to build this line to further their own interests, to convey product of the one for refinement by another? A man owning a farm, and also interested in a mill, may not the mill owners induce the farmer to build some means of transporting his wheat to that mill, without being liable to suit by a man owning a railroad which had been accustomed to carry wheat from that farm? And suppose there were no common interest in the farm and mill, cannot the mill owners induce this farmer to build a means of transport from his farm to their mill? Is this soliciting trade by any usual means, a legal wrong to competitors? The gravest item under this head is the charge that the Standard Company required oil producers (without specifying any but the West Virginia Oil Company), as a condition precedent to purchasing their oil, to ship through said pipe line, and required those producers in the land of the West Virginia Oil Company to do so as a condition precedent to holding their leases, notwithstanding that the more usual and satisfactory route of transport was the pipe line of the plaintiff; and that later the defendants, through the Eureka Pipe Line Company, to further accomplish their purpose of ruining the plaintiff, built a branch pipe line through territory which had for years patronized the plaintiff's line, in order to prevent and forestall the plaintiff from transacting, acquiring, or maintaining any business, and from extending its line to any other territory; and that the defendants and confederates, by their monopoly and control over the oil business, refused to ship, or permit others to ship, oils, or buy oils shipped through the plaintiff's line, and, being the only refiners of oil at Parkersburg and elsewhere, refused to buy oil shipped through the pipe line of the plaintiff. At first blush this conduct might appear wrong; but a second thought again presents the question whether the defendants in this did anything unlawful. The defendant companies were all in common interests. Could they not unite to further their interests? Could not the Standard Oil Company buy from whom it chose? And within the pale of this right could it not impose such conditions as it chose? Cannot the village merchant say to the farmer, "I will not buy your eggs unless you buy my calico?" Cannot the big mill owner refuse to buy wheat from those who do not ship it over a railroad or steamboat line owned by him? Cannot the mill owner refuse to lease his farm to those who do not sell products to his mill? He may be exacting and oppressive, but can other mill owners sue him for this? Is this right not a part and parcel of his business right? It is the right, even when there is no common ownership, as there is in this case, of one man to buy of whom he chooses; and he can impose arbitrary, hard conditions, if the other party chooses to accede to them. So it is the clear right of the other party to sell to whom he chooses, and, he having this right, how does the other party do a wrong in purchasing from him? The right of the one carries with it the right of the other. These producers of oil had right to sell to whom they chose, to ship their oil by what pipe line they chose, and they had the right to submit to the terms of the Standard Oil Company, and in view of this right the company could buy from whom it chose, and on such terms as it chose; for the right of the former would bear no fruitage, would be futile, without the corresponding right of contract in the company. Observe the question here is not one of enforcing a contract in favor of a monopoly, or of determining whether its conditions are reasonable; not a question of how far the courts would go to enforce a contract between the Standard Oil Company and producers, or between the Eureka Company and producers binding the latter to transport oil only over that line; not a proceeding by the state to forfeit a charter for misuse. The question here is, has the company, by illegal

act, violated the rights of the plaintiff? Counsel for plaintiff put emphasis on the charge of conspiracy and malice; but there can be no conspiracy to do a legitimate act,—an act which the law allows,—nor malice therein. To give action there must not only be conspiracy, but conspiracy to do a wrongful act. If the act is lawful, no matter how many unite to do it. Bohn Mfg. Co. v. Northwestern Lumbermen's Assn. (Minn.), 55 N. W. Rep. 1119, 21 L. R. A. 337, 40 Am. St. Rep. 319. "A conspiracy cannot be made the subject of an action, though damages result, unless something is done which, without the conspiracy, would give right of action. The true test as to whether such action will lie is whether the act accomplished after the conspiracy is formed is itself actionable." Delz v. Winfree, 80 Tex. 400, 16 S. W. Rep. 111, 26 Am. St. Rep. 755. An agreement to get trade into your own hands,—that being the sole purpose,—though it harm others, is not actionable. Steamship Co. v. McGregor, 21 Q. B. Div. 544, 23 C. B. Div. 598 (see note below); Huttley v. Simmons (1898), 1 Q. B. Div. 181. The case cited by counsel (Morris Run Coal Co. v. Barclay Coal Co., 68 Pa. 173, 8 Am. Rep. 159) was a combination of coal companies to enhance prices to the public. So People v. Sheldon, 139 N. Y. 251, 34 N. E. Rep. 785, 23 L. R. A. 221, 36 Am. St. Rep. 690, and People v. Milk Exchange (N. Y.), 39 N. E. Rep. 1062, 27 L. R. A. 437, 45 Am. St. Rep. 609, involved right of a corporation to fix prices of milk, and it was declared against public policy, so as to forfeit charter. Jackson v. Stanfield (Ind. Sup.), 36 N. E. Rep. 345, 37 N. E. Rep. 14, 23 L. R. A. 588, comes nearer the point, though it, too, has in it the element of an agreement harmful to the public, and is not a case where owners of property and business, as here, seek to further their interests by inducing others to trade with them, and not with competitors. There it was a pure agreement to compel others not to deal with a party (a boycott), not as in this instance, to compel persons to deal with the defendants. State v. Standard Oil Co., 49 Ohio St. 137, 30 N. E. Rep. 279, 15 L. R. A. 145, 34 Am. St. Rep. 541, was an agreement to control production and prices against the public interests, and was a proceeding by the state to withdraw a charter, not an action by an individual on the theory of private injury. I do not say that an individual damaged by a combination against public policy and law cannot sue. I say he can. In Bohn Mfg. Co. v. Northwestern Lumbermen's Assn. (Minn.), 55 N. W. Rep. 1119, 21 L. R. A. 337, 40 Am. St. Rep. 319, it is held that "any man, unless under contract obligation, or unless his employment charges him with some public duty, has right to refuse to work for or deal with any man or class of men, as he sees fit; and this right, which one man may exercise singly, any number may exercise jointly." The wholesale merchants refuse to deal with consumers in favor of retail dealers. Can we consumers sue them? "He may refuse to deal with any man or class of men. It is no crime for any number of persons, without any unlawful object in view, to associate and agree that they will not work for or deal with certain men, or classes of men, or work under a certain price, or without certain conditions." Carew v. Rutherford, 106 Mass. 1, 14, 8 Am. Rep. 287. The great Chief Justice Shaw said that the legality of the association depends upon its object, and whether it be innocent or otherwise. Com. v. Hunt, 38 Am. Dec. 346. The law allows men to combine to obtain a lawful benefit to themselves. Grenh. Pub. Pol. 651. In Olive v. Van Patten, 7 Tex. Civ. App. 630, 25 S. W. Rep. 428, while condemning the particular act involved in that case, the court declared the right to compete, though it injured the plaintiff. "This would be legitimate. They could do this without responsibility for injurious consequence to the plaintiff's business; but they could not, without some legal purpose directly serving their own business, maliciously induce others not to trade with the plaintiff." Who can say that the acts attributed to the defendants did not benefit them? Had they done these acts to benefit strangers, from malice, it would be different. Now, these companies were furthering their own interests in lawful competition with others. If they possessed the lawful right above stated, what matters it that they did have the intent to cut down the business of others, or that they did cut it down and injure others, though they did this that they might themselves fatten? So far this first count charges only the exercise by the defendants of a right of constitutional liberty, accorded alike to all,—simply the right of self-advancement in legitimate business,—self-preservation we may say That in these days of sharp, ruinous competition some perish is inevitable. The dead are found strewn all along the highways of business and commerce. Has it not always been so? Will it always be so? The evolution of the future must answer. What its evolution will be in this regard we do not yet know, but we do know that thus far the law of the survival of the fittest has been inexorable. Human intellect—human laws—cannot prevent these disasters. The dead and wounded have no right of action from the working of this imperious law. This is a free country. Liberty must exist. It is for all. This is a land of equality, so far as the law goes, though some men do in lust of gain get advantage. Who can help it.

Another feature is to be noted. The count does not specify that the plaintiff had any subsisting contracts with oil producers for the conveyance of oil. The field was open to all. If there had been such contracts, and frustrated by a malicious conspiracy, it would be actionable, in my opinion, though the cases differ. If done for one's own benefit, it is actionable, there being a fixed contract. Principles stated and cases cited in a Florida case clearly sustain this. It is a luminous case. Chipley v. Atkinson, 23 Fla. 206, 1 South. Rep. 934, 11 Am. St. Rep. 367. See

Boysen v. Thorn (Cal.), 33 Pac. Rep. 492, 21 L. R. A. 233; Flaccus v. Smith (Pa.), 48 Atl. Rep. 894; Bowen v. Hall, 6 Q. B. Div. 333; Doremus v. Hennessy (Ill.), 52 N. E. Rep. 924, 54 N. E. Rep. 524, 43 L. R. A. 797, 68 Am. St. Rep. 203; Perkins v. Pendleton (Me.), 38 Atl. Rep. 96, 60 Am. St. Rep. 252.

There is one charge in the first count, which, but for one defect, presents a cause of action, and that is that defendants wickedly and maliciously, to injure the plaintiff, represented to "various persons," customers of the plaintiff, that the plaintiff's pipe lines and appliances were unsafe and dangerous to transport and store petroleum. The question arises whether this count is not too general, or, rather, indefinite, in not naming the persons to whom such representations were made. Clearly, the defendants are entitled to specification here, in order to meet the charge. But is this nomination a necessary part of the declaration? I think not, as it can be done by bill of particulars. Considerable is said of the office performed by bills of particulars in Clarke v. Railroad Co., 39 W. Va. 732, 20 S. E. Rep. 696. In that excellent late work, 3 Enc. Pl. & Prac. p. 519, the law is put in a nutshell: "A bill of particulars does not set forth the cause of action or ground of defense. These constitute the functions of the original pleading. The chief office of a bill of particulars is to amplify a pleading, and more minutely specify the claim or defense set up." Here the charge is false representation of insufficiency of the plaintiff's machinery and appliances, which is the ground of action. The persons to whom the representations were made are only a specification to make definite and specific the charge, and to limit its generality. The declaration is not bad for this cause. It is said that in addition to the charge of false representation, there should be a distinct, affirmative allegation that the representations were false and the machinery good. That would conform better to technical pleading, but the word "falsely" will answer this purpose, especially in view of section 29, ch. 125, Code.

Second Count. It specifies as its pointed *gravamen* that the defendants and Shattuck conspired to destroy the plant and business of the plaintiff, and did by threats and unfair means oblige persons owning and producing oil to ship it by other means of transportation than those of the plaintiff, which persons had before been the customers of the plaintiff; and that the West Virginia Oil Company and Shattuck notified such customers not to ship any oil over the plaintiff's line, and not to permit plaintiff to do any business in transporting oil, so far as such customers could prevent it. While the first count does, the second count does not, state that the defendants were engaged in the business of buying, refining, and transporting oil as competitors with the plaintiff, and thus present a justification for their action, but simply charges that they interfered unlawfully and maliciously with the plaintiff's business, with malign purpose to destroy it. This, I think, is a legal cause of action. It is argued for the defendants that it is not stated that the plaintiff had contracts with its patrons with which the defendants interfered, and without right induced such patrons to break such contracts; and that, as such customers had right to deal with whom they pleased, the defendants could not commit an actionable wrong in inducing them to withdraw their usual patronage from the plaintiff. But it does seem to me that, though those customers had such right, it did not impart to the defendants any right and immunity to step in between them and the plaintiff, and induce those customers to withdraw their patronage, not for the benefit of the defendants in the exercise of the right of free competition, but in malice only to injure and destroy the plaintiff. Cases above cited show this. In Delz v. Winfree, 80 Tex. 400, 16 S. W. Rep. 111, 26 Am. St. Rep. 755, it is held that while one has a right to deal with whom he pleases, yet this right is limited to him, and does not give another the right to influence him not to deal. It is an officious act, hurtful to another, not done in legitimate competition, without just excuse, done only to injure a fellow. It is a "boycott." Cook, Trade & Labor Combin. § 9; Crump's Case, 84 Va. 927, 6 S. E. Rep. 620, 10 Am. St. Rep. 895; Beach, Monop. 311, 322. "In all cases where a man has a temporal loss or damage by the wrong of another, he may have an action on the case to be repaired in damages. The intentional causing of such loss to another, without justifiable cause, and with the malicious purpose to inflict it, is of itself a wrong." Walker v. Cronin, 107 Mass. 555; Carew v. Rutherford, 8 Am. Rep. 287. "Every one has a right to enjoy the fruits of his own enterprise, industry, skill, and credit. He has no right to be protected against skill and competition, but he has a right to be free from malicious and wanton interference, disturbance, and annoyance. If disturbance and annoyance come as a result of competition, or the execution of like rights by others, it is *damnum absque injuria*, unless some superior right by contract or otherwise is interfered with. But if it comes from the mere wanton or malicious acts of others, without the justification of competition, or the service of any interest or lawful purpose, it then stands on a different footing," and the wrong is actionable. Walker v. Cronin, *supra*; 1 Eddy, Trade Comb. § 480.

Counsel for defendants, in answer to the second count, take the position that no contract is stated as subsisting between the plaintiff and its patrons, and that the defendants are not charged with inducing the violation of any contract, and that as these patrons of the plaintiff had perfect right to withhold their patronage, and could not be sued for so doing, the defendants did no legal wrong in inducing those patrons to do so. I do not concur in this view. The authorities above logically repel it. That there

is no binding contract between employer and employee, or between the trader and his usual customers, makes no difference. Presumably, the customers would have continued their voluntary patronage but for the wrongful intervention and influence of the intervener. I think this contention is met by Chipley v. Atkinson, 23 Fla. 206, 1 South. Rep. 934, 11 Am. St. Rep. 367; Benton v. Pratt, 2 Wend. 385, 20 Am. Dec. 623; Rice v. Manley, 66 N. Y. 82, 23 Am. Rep. 30.

I understand the law to be as follows: One may without liability induce the customers of another to withdraw their custom from him, in the race of competition, in order that the former may himself get the custom, there being no contract; and it is no matter that such person is injured, and it is no matter that the other party was moved by express intent to injure him; motive being immaterial where the act is not unlawful. But where the act is not done under the right of competition, or under the cover of friendly, neighborly counsel, but wantonly or maliciously, with intent to injure another, it is actionable, if loss ensue. Nor is it material in the latter case that there was no binding contract between the business man and his customers. He cannot interfere, even for his own benefit, if there is a contract. I think the second count states a cause of action, but for certain defects. It names no customers of the plaintiff whom the defendants instigated to withdraw their custom. This is the very point of the count. The defendants ought to have specification in this important matter. But this could be done by bill of particulars. The count avers that the defendants used threats to compel customers of the plaintiff to withdraw their custom. What threats? What did they have to fear? What was the means of intimidation? The count does not tell us. As one may, as a neighbor or friend, give advice, it seems to me the declaration should negative this by importing a wrongful act, but as it charges the act as done maliciously, with intent to injure, I was put to a query, whether that was enough; whether the allegations of threats was necessary. But the count goes on that theory as an elemental wrong, and it seems it ought to specify the threats, so that we may see whether they were such as to induce a withdrawal of custom. Moreover, it seems to me that the mere statement that defendants notified customers not to ship over plaintiff's line, not to store oil with it, not to permit it to do any business, is very general. Ought not some relation or means of compulsion be shown to exist between the defendants so giving notice and the persons notified to warrant the idea that the defendants had authority to so notify, some means of enforcing such notice, some means to influence such persons? What do the defendants have to meet under this head? How could they prepare for trial?

We hold the first count good, the second bad, and reverse and remand.

Note by BRANNON, J.: After the court had considered the above opinion, it occurred to me that for use in practice where the English books are not accessible it would be better to state a little more fully the holdings of the two English cases cited above and so often referred to in this connection. In Steamship Co. v. McGregor, 21 Q. B. Div. 544, affirmed in 23 Q. B. Div. 598, the syllabus reads: "The defendants, who were firms of shipowners trading between China and Europe, with a view of obtaining for themselves a monopoly of the homeward tea trade, and thereby keeping up the rate of freight, formed themselves into an association, and offered to such merchants and shippers in China as shipped their tea exclusively in vessels belonging to members of the association a rebate of 5 per cent. on all freights paid by them. The plaintiffs, who were rival shipowners trading between China and Europe, were excluded from all the benefits of the association by the defendants, and in consequence sustained damage. Held, that the association being formed by the defendants with the view of keeping the trade in their own hands, and not with the intention of ruining the trade of the plaintiffs, or through any personal malice or ill will towards them, was not unlawful, and that no action for conspiracy was maintainable." In Huttley v. Simmons (1898), 1 Q. B. Div. 181, the court stated the rule closely: "A conspiracy to do certain acts (not being criminally punishable) gives a right of action only where the acts agreed to be done and in fact done, would, had they been without preconcert, have involved a civil injury to the plaintiff, for which he would have had a right of action."

NOTE.—*Conspiracy—What Acts Constitute Conspiracy Involving Civil Liability.*—In these days of intense business activity and of opportunities to gain control over important commercial enterprises, questions of conspiracy to injure and depreciate the trade of others must not infrequently arise. In such cases, however, it is hardly too much to say that the charge will be made more often than the facts will justify. For it must be borne in mind that every conspiracy to injure the trade of another is not a technical conspiracy that will involve the conspiring parties in a civil liability. Probably the best definition of conspiracy is that offered by the court in the case of Breitenburger v. Schmidt, 38 Ill. App. 168, as follows: "Conspiracy is an unlawful combination or agreement between two or more persons to do an act unlawful in itself, or to do a lawful act by unlawful means.

Essentials of the Action.—Of course there must be the "conspiracy" or agreement between two or more persons. But this is not all. An act which, if done by one alone, constitutes no ground for action on the case, cannot be made the ground of such action by alleging it to have been done by and through a conspiracy of several. The quality of the act and the nature of the injury inflicted by it, must determine the question whether the action will lie. Kimball v. Harman, 34 Md. 407, 6 Am. St. Rep. 340; O'Callaghan v. Cronan, 121 Mass. 114. Of course the combination necessary to constitute conspiracy must be active collusion and participation in the scheme or its execution; mere silent observation and acquiescence are not sufficient. Brannock v. Bouldin, 26 N. Car. 61; Brinkley v. Platt, 40 Md. 529. A curious case is noted in Kirtley v. Deck, 2 Munf. (Va.) 10, 5 Am. Dec. 445, where it was held that an action for conspiracy will not lie against husband and wife only, as they are are but one person. This rule might be denied, and on principle ought to be, under the radical changes made by some of our Married Woman's Acts. In a civil action for conspiracy, however, the *ravamen* in addition to the unlawful act is not the conspiracy, but the malice; the former is matter of aggravation or inducement only, in the pleading and

evidence, under which one or all of the defendants may be found guilty. Van Horne v. Van Horne, 52 N. J. L. 284, 20 Atl. Rep. 485. Therefore, malice is an essential element. See also Lewis v. Spalding, 2 Cranch (U. S.), 680. Another very necessary ingredient is the commission of the act. McHenry v. Sneer, 56 Iowa, 649, 10 N. W. Rep. 234; Hinchman v. Richie, Brightly N. P. (Pa.), 143. Therefore, though a a conspiracy to do an unlawful act is indictable though nothing be done in pursuance of it, it is not then subject of a civil action, unless some act be done to give effect to the purposes of the conspirators. As to what constitutes a sufficient overt act, see Raleigh v. Cook, 60 Tex. 438. There must also be damage. In the absence of damage, the simple act of conspiracy does not furnish ground for a civil action. Doremus v. Hennessy, 62 Ill. App. 391; Stevens v. Rowe, 59 N. H. 578; Bradley v. Pierson, 148 Pa. St. 502, 24 Atl. Rep. 65; Herron v. Hughes, 25 Cal. 555; Robertson v. Parks, 76 Md. 118, 24 Atl. Rep. 411; Eason v. Retway, 18 N. Car. 44.

What Acts Constitute Conspiracy.—One of the most fertile sources of civil action for conspiracy is to be found in the relation of master and servant. Conspiracies by employees to raise wages, to quit employment, to declare boycotts and strikes and to induce or compel others to quit their employment; and, on the other hand, conspiracies by employers to control the labor market, to lower wages and to blacklist employees for certain offenses, are all of common occurrence. Of late years there has been much discussion of these questions, too much of it of a political character, however, to be seriously considered in a judicial forum. The difficulty and confusion resulting has largely come from the failure of the courts to distinguish, as does the court in the principal case, between the conspiracy to do the act complained of and the act itself. The simple rule to be followed in this class of cases is first to determine whether the act itself, standing alone, and if done by a single individual, is unlawful. If it is, a conspiracy to do the act is unlawful, not because of the conspiracy, but because the act itself is unlawful; if the act is not unlawful, no conspiracy, no matter how vast the combination, nor how malignant the intent, nor how great or morally unjust the damage, can be charged as a basis for a civil action. Is it right for an employee to demand higher wages? If it is, it is not unlawful for a trades union to adopt a scale of wages, for which its members may work, and endeavor by all peaceable means to enforce its acceptance by the employer. Longshore Printing Co. v. Howell, 26 Oreg. 527, 38 Pac. Rep. 547, 46 Am. St. Rep. 640; Mayer v. Stone Cutter's Association, 47 N. J. Eq. 519, 20 Atl. Rep. 492. Is it right for an employee to quit for any reason, or arbitrarily, for no reason at all? If it is, a combination among many employees, having for its object their orderly withdrawal from the service of their employers, is not illegal. Arthur v. Oakes, 63 Fed. Rep. 310. A line of decisions on this question seems to hold that if employees quit in a body for the purpose embarrassing their employer and thereby enforcing a demand against him is an actionable conspiracy. We cannot see any legal basis for these decisions on principle. What one man has a right to do, a body of men have a right to do, in the absence of statute, of course. If the act itself is not unlawful a conspiracy to do it cannot be unlawful, whether done with malice or not, or whether resulting in damages or otherwise. Is it right for a person to induce another man to quit work? If it is, a conspiracy to induce the servants of another to leave his employ is not actionable. Longshore Printing Co. v. Howell, 26 Oreg. 527, 38 Pac. Rep. 547, 46 Am. St, 640, 28 L. R. A. 464. The decisions which seem to controvert this statement will be found to be cases in which threats and other unlawful acts of intimidation were committed. In such cases, of course, the act itself is unlawful and therefore the conspiracy to do them is tainted with illegality. On the other hand, has the employer the right to discharge his employees or to refusee to hire others for any reason or for no reason at all? If he has, a combination of several employers to resist the demands of labor unions by refusing to deal with them or to sell goods to persons who employed its members, or to discharge or blacklist certain employees cannot be legally complained of. Cote v. Murphy, 159 Pa. St. 420, 28 Atl. Rep. 190, 39 Am. St. Rep. 686. In this case will be found an able presentation of when a conspiracy, otherwise not unlawful, may become so when it prejudices the public interest. Of course, all agreements are void which contravene public policy and an agreement of conspiracy is no exception to this rule.

The law as to boycotts is involved in much confusion. Nothing more will be necessary to say than that the whole question hinges on the fact whether the act of refusing to patronize, or of inducing others not to patronize, is a lawful act. It cannot, of course, be seriously questioned whether one has not the right to refuse to patronize another for any reason. In such a case, therefore, a combination among many not to deal with or patronize another for any reason is not unlawful. Hunt v. Simonds, 19 Mo. 583; Macauley v. Tierney, 19 R. I. 255, 33 Atl. Rep. 1. The most serious question arises where there is a conspiracy to induce others not to patronize. This was a technical boycott at common law and rendered the boycotter liable in damages. Old Dominion, etc. Co. v. McKenna. 30 Fed. Rep. 48. Some courts still adhere to this rule. Delz v. Winfree, 80 Tex. 400; Casey v. Typographical Union, 45 Fed. Rep. 135; Jackson v. Stanfield, 137 Ind. 592, 36 N. E. Rep. 345. Other cases, however, hold to a contrary doctrine. Bohn Mfg. Co. v. Hollis, 54 Minn. 223, 55 N. W. Rep. 1119, 40 Am. St. Rep. 319; Macauley v. Tierney, 19 R. I. 255, 33 Atl. Rep. 1. We are inclined to the position that under our constitutions, granting the right of free speech, a man cannot be held liable for persuading another to withdraw his patronage from another either arbitrarily or that he might benefit himself individually by such patronage. Where such is the admitted rule, we cannot conceive on principle any illegality in a combination or conspiracy to do the same thing, where no threats or other acts of intimidation are practiced.

Of course a conspiracy to injure one in his person or reputaion is actionable. Thus, a conspiracy to vex and harass a person by having him subjected to an inquisition of lunacy without probable cause, is actionable. Davenport v. Lynch, 51 N. Car. 545. See also Smith v. Nippert, 76 Wis. 86, 44 N. W. Rep. 846; Dreux v. Domec, 18 Cal. 83; Wildee v. McKee, 111 Pa. St. 335, 56 Am. Rep. 271.

Some confusion of authority exists as to civil liability for conspiracy to injure a person in his property or business. Thus, it was held in Van Horne v. Van Horne, 52 N. J. L. 284, that an action will lie for a combination or conspiracy, by fraudulent and malicious acts to drive a trader out of business, resulting in damages. On the other hand, it was held in Kelley v. Railroad, 93 Iowa, 436, 61 N. W. Rep. 957, that where the contract between a railroad com-

pany and the proprietor of one of its eating houses does not require it to stop its trains at his hotel in order that its passengers may take their meals there, it does not constitute an actionable conspiracy on the part of the company against such proprietor, for it to induce another to start an eating house a short distance from him, by agreeing to stop its trains there for meals. See also to same effect, Bowen v. Matheson, 96 Mass. 499; Jayne v. Drorbaugh, 63 Iowa, 711; Fairbanks v. Newton, 50 Wis. 628. In this class of cases, as in all the others we must come back to the original test—would the act itself, without the conspiracy, give a right of action? This is undoubtedly a most sound and logical rule with the further and very desirable attribute of certainty.

ALEXANDER H. ROBBINS.

JETSAM AND FLOTSAM.

DETECTING FRAUDS IN SPIRITUALISM.

One of the lawyer's most necessary accomplishments is an ability to detect fraud and uncover rascality. A lawyer may be fully "read up" on the law of fraud and deceit and be of less value to a litigant than a more resourceful layman. This is well illustrated by a rather humorous news item which has just reached our notice. A series of spiritulistic seances were in progress at East St. Louis for several weeks. The promoters of the seances had warned all who attended that to touch one of the "ghosts" would not only be fatal to experiments, but might result seriously to the doubter. John and Henry Jacobs believed the seances to be fakes but they had enough superstitious doubt to refrain from touching the ghosts. The tack theory test suggested itself to them and was executed with startling success. A "ghost" being called up proceeded to perambulate the room with steady tread. As he crossed the double line of tacks with upward turned points a howl of pain rent the night air, and the disembodied spirit grasped one bare foot in both hands, screaming most unghostly malediction on the dobuting Thomases. The seance was broken up in a hurry.

UNIFORM DIVORCE LEGISLATION.

It appears from the report of the committee on marriage and divorce appointed by the conference of commissioners from the various states for promoting uniformity of legislation in the United States, that none of the states have as yet adopted the proposed draft of an act to establish uniform divorce procedure throughout the United States. The conference, which met in Denver last August, amended the act slightly and divided it into two parts and urgently recommended its passage by the various state legislatures. The following is form in which this legislation is recommended:

An Act to Establish a Law Uniform with the Laws of Other States Relative to Migratory Divorces.

Section 1. No divorce shall be granted for any cause arising prior to the residence of the complainant or defendant in this state which was not a ground for divorce in the state where the cause arose.

Sec. 2. The word "divorce" in this act shall be deemed to mean divorce from the bond of marriage.

Sec. 3. All acts and parts of acts inconsistent herewith are hereby repealed.

An Act to Establish a Law Uniform with the Laws of Other States Relative to Divorce Procedure and Divorce from the Bonds of Marriage.

Section 1. No person shall be entitled to a divorce for any cause arising in this state, who has not had actual residence in this state for at least one year next before bringing suit for divorce, with a *bona fide* intention of making this state his or her permanent home.

Sec. 2. No person shall be entitled to a divorce for any cause arising out of this state unless the complainant or defendant shall have resided within this state for at least two years next before bringing suit for divorce, with a *bona fide* intention of making this state his or her permanent home.

Sec. 3. No person shall be entitled to a divorce unless the defendant shall have been personally served with process, if within this state, or if without this state, shall have had personal notice duly proved and appearing of record, or shall have entered in appearance in the case; but if it shall appear to the satisfaction of the court that the complainant does not know the address nor the residence of the defendant and has not been able to ascertain either, after reasonable and due inquiry and search, continued for six months, after suit brought, the court or judge in vacation may authorize notice by publication of the pendency of the suit for divorce, to be given in manner provided by law.

Sec. 4. No divorce shall be granted solely upon default nor solely upon admissions by the pleadings, nor except upon hearing before the court in open session.

Sec. 5. After divorce either party may marry again, but in cases where notice has been given by publication only, and the defendant has not appeared, no decree or judgment for divorce shall become final or operative until six months after hearing and decision.

Sec. 6. Wherever the word "divorce" occurs in this act, it shall be deemed to mean divorce from the bonds of marriage.

Sec. 7. All acts and parts of acts inconsistent herewith are hereby repealed.

BOOK REVIEWS.

WARVELLE ON LEGAL ETHICS.

One of the most refreshing little books of interest to lawyers that has reached the editor's attention is that recently prepared by Mr. George W. Warvelle, LL. D., on the subject of "Legal Ethics." It would seem, at first glance, to be a theme quite hackneyed, and thoroughly covered by previous disquisitions by Hoffmann, Sharswood and others. Dr. Warvelle, however, makes the subject interesting by making it practical. He takes it out of the realm of fancy and abstraction and places in concrete juxtaposition with the actual facts and occurrences of a lawyer's practice. He opens with a discussion as to the origin of advocacy and the character of early practitioners; their separation into solicitors and barristers, and the freedom of the latter from all commercial influences. The barrister's allegiance was to the "king and the people," and to preserve his independence of action the custom of interventions between advocate and client gradually grew up, so that in theory, at least, the English barrister made, and even to day, makes no charge for his services, his emoluments being in the nature of an honorarium. In America no such distinction ever obtained to any appreciable extent. The writer then takes up the relation of the advocate to the courts; the methods of summary discipline upon dereliction of professional duty as by disbarment, suspension, fines and

reprimands. Probably the most interesting chapter, however, to the young attorney is that entitled Promotion and Publicity, in which the author treats of the ethics of advertising. What may a "briefless barrister" do to obtain business. The sentimental gush which has been wasted on this subject is hard to estimate and is utterly disgusting. Common sense should teach a professional man that he cuts his own throat by personally soliciting business or by blatantly "blowing his own horn." Such action on his part creates an aversion in the mind of those sought to be affected. Leaving out such direct solicitation, however, as unworthy of a member of the noblest profession in the world, there are many and various expediencies and advertising methods by which a lawyer may make himself known in a modest way and without bringing reproach upon himself or his profession. These methods are carefully analyzed by Dr. Warvelle very sensibly from an ethical standpoint. Subsequent chapters of this work treat of the compensation of attorneys and their relation with clients, with the court and with members of the bar. Altogether the book is very interestingly and profitably written and should have a place in the curriculum of every reputable law school. Printed in a 12 mo. edition of 234 pages and bound in cloth. Published by Callaghan & Co., Chicago.

HUMORS OF THE LAW.

Prospective Juryman—"I think—"

Judge—"Stop! sir; stop right there. You are disqualified for the duties of a juryman."

"At the assizes," says the *St. James Gazette*, "a man was found guilty of murdering another, at Tipperary, by striking him over the head with a blackthorn. The judge asked him the usual question, if he had anything to say why sentence should not be passed upon him. 'Well, my lord,' answered the prisoner at the bar, 'all I can say is, a man with such a thin skull as that had no business at Tipperary fair.'"

"What's the difference between a widow and a grass widow, anyhow?" Well, a widow is a woman who has buried her husband; a grass widow is one who has simply mislaid him."

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts

1. ABATEMENT AND REVIVAL—Same Cause Pending.—A prior suit in the same jurisdiction, between the same parties, for the same cause of action, may be pleaded as *lis pendens*.—Kansas City S. Ry. Co. v. Railroad Commission of Louisiana, La., 31 South. Rep. 131.

2. ABATEMENT AND REVIVAL—Survival of Action to Rescind Fraudulent Conveyances.—Right of action to rescind conveyances obtained by fraud and misrepresentation held to survive.—Parker v. Simpson, Mass., 62 N. E. Rep. 401.

3. ACCOUNT STATED—Statement of Firm Account by Partner.—Partner, receiving statement of firm account which erroneously included an individual debt of another partner, held not liable therefor by failing to object.—National Cycle Mfg. Co. v. San Diego Cycle Co., Cal., 67 Pac. Rep. 280.

4. ACTION—Misjoinder.—The joinder in a declaration on a false warranty of a count in *assumpsit* and one in tort held a misjoinder.—Dean v. Cass, Vt., 50 Atl. Rep. 1085.

5. ADVERSE POSSESSION—Of Trustee Against Insane Person.—A deed executed to a trustee being void, because the beneficiary was of unsound mind, no lapse of time can give him title as against the beneficiary or his heirs.—Spicer v. Holbrook, Ky., 66 S. W. Rep. 180.

6. ALTERATION OF INSTRUMENTS — Entry of Name on Mileage Book.—Unauthorized entry of the name of a person entitled to use railway mileage book held a fraudulent and material alteration of contract.—Holden v. Rutland R. Co., Vt., 50 Atl. Rep. 1096.

7. APPEAL AND ERROR - Agreed Statement of Facts.—Agreed statement of facts that only issue on appeal was one of law eliminated all questions of fact from the case.—Hardman v. Crawford, Tex., 66 S. W. Rep. 206.

8. APPEAL AND ERROR—Exceptions to Master's Report.—Where no exceptions are filed to a master's report, the question whether his findings were based on admissible evidence will not be considered on appeal.—Dee v. King, Vt., 50 Atl. Rep. 1109.

9. APPEAL AND ERROR — Motion to Affirm.—Where the court of civil appeals continues motion to affirm on certificate to enable appellant to perfect that record, but he instead prosecutes a writ of error, the motion to affirm will prevail.—Rio Grande & E. P. Ry. Co. v. Mendoza, Tex., 66 S. W. Rep. 250.

10. APPEAL AND ERROR — Presumption as to Right of Appeal.—Where defendant excepts to a judgment of the county court dismissing an appeal from a justice, and the bill of exceptions does not contain a complete account of the justice's proceedings, it will be presumed it was not appealable.—Chase v. Bernier, Vt., 50 Atl. Rep. 1056.

11. ASSIGNMENTS—Assignment of Attorney's Fees.—Where an attorney assigned to a creditor his fee due from trustees, and they led him to believe that the only question was one of amount, to be fixed by the court, they cannot, as against the assignee, retain any part of amount allowed for their own use.—Stone v. Hart, Ky., 66 S. W. Rep. 191.

12. ASSIGNMENT FOR BENEFIT OF CREDITORS — Cause

of Action on Bond.—A cause of action on a bond of an assignee for creditors does not accrue to a distributee until the trustee has been ordered to pay a definite sum and has failed to do so.—Stone v. Hart, Ky., 66 S. W. Rep. 191.

13. ATTACHMENT—Date of Filing Certificate.—The lien of an attachment depends on the date of the filing of the certificate, and a mere clerical error by the clerk in copying it into the record will not defeat the lien.—Schlosser v. Beemer, Oreg., 67 Pac. Rep. 299.

14. ATTORNEY AND CLIENT — Agreement Not to Charge for Services.—An agreement by an attorney not to charge for his services held binding on his partner, though ignorant of the agreement.—Stone v. Hart, Ky., 66 S. W. Rep. 191.

15. BANKRUPTCY—Discharge of Debtor Does Not Discharge Garnishee.—The discharge in bankruptcy of a debtor, after the rendition of judgment against his garnishee, held not to discharge the latter.—Marx v. Hart, Mo., 66 S. W. Rep. 260.

16. BANKS AND BANKING — Liability for Checks Signed by Agents.—Where deposit is made in name of "F, Attorney for B," the bank can pay checks so signed without liability to B.—Pennsylvania Title & Trust Co. v. Real Estate Loan & Trust Co., Pa., 50 Atl. Rep. 998.

17. BENEFIT SOCIETIES—Duty to Appeal from Suspension.—Beneficiary in a mutual benefit association certificate held not exempted from the rule requiring, on suspension of member, an appeal to the tribunals of the order.—Finerty v. Supreme Council, Catholic Knights of America, Iowa, 88 N. W. Rep. 834.

18. BILLS AND NOTES—Extension of Time by Indorsement.—An indorsement on a note, reciting the receipt of an insufficient sum as interest to a future date, held *prima facie* evidence of the receipt of such money as interest, and consequently of an extension of time to the principal debtor.—Lazelle v. Miller, Oreg., 67 Pac. Rep. 307.

19. BROKERS—Right to Sue Purchaser.—A real estate broker may sue a purchaser who has refused to carry out his contract with the vendor, whereby the broker has lost his commission from the vendor.—Livermore v. Crane, Wash., 67 Pac. Rep. 228.

20. BUILDING AND LOAN ASSOCIATIONS—Loaning to Highest Bidder.—Under Code 1886, § 1556, subps. 9, 10, a building and loan association is not required to call for bids or loan to the highest bidder unless its by-laws so prescribe.—Beyer v. National Bldg. & Loan Assn., Ala., 31 South. Rep. 113.

21. BUILDING AND LOAN ASSOCIATION—Usury.—A loan made by a building association is not usurious because a monthly payment as premium is required, in addition to the interest.—Beyer v. National Bldg. & Loan Assn., Ala., 31 South. Rep. 113.

22. CARRIERS — Passenger Injured by Falling from Step.—Where a passenger stands on the step of a car as it is about to stop, and loses his balance, and falls, and he alleges the sudden jerking of the car, and the evidence shows that such jerking was not greater than was usual in the stopping of street cars, and there was no discoverable defect in the step, he cannot recover for injuries.—Phillips v. St. Charles St. R. Co., La., 31 South. Rep. 135.

23. CHATTEL MORTGAGES—Parol License to Sell.—Parol license to sell mortgaged personalty held a defense, in conversion by the mortgagor against the buyer.—Hunt v. Allen, Vt., 50 Atl. Rep. 1103.

24. CHATTEL MORTGAGES — Recovery of Amount Stated in Mortgage.—Mortgagee may recover amount stated in mortgage to be due, though note it is given to secure is never executed.—Swancey v. Parrish, S. Car., 40 S. E. Rep. 554.

25. CHATTEL MORTGAGES — Satisfying Other Liens.—A chattel mortgagee, on taking possession and selling, properly satisfied a landlord's lien out of the proceeds.—Downie v. Christen, Iowa, 88 N. W. Rep. 830.

26. COMMERCE — Oleomargarine in Original Packages.—Code Pub. Gen. Laws, p. 489, art. 27, § 89, as amended by Supp. Code, 1890-1900, p. 33, art. 27, § 88, is void in so far as it is construed to prohibit the having in possession and sale within the state of oleomargarine in the original package made in another state.—McAllister v. State, Md., 50 Atl. Rep. 1046.

27. CONSPIRACY—Combination to Do Lawful Act.—Where several combine and agree to do a lawful act, it is not an unlawful conspiracy subjecting them to action, though the act injures another and was so intended.—West Virginia Transp. Co. v. Standard Oil Co., W. Va., 40 S. E. Rep. 591.

28. CONSTITUTIONAL LAW—Regulating Appeals and Appellate Procedure.—Though, under Const. art. 7, § 4, the legislature cannot absolutely deprive the supreme court of appellate jurisdiction, it may within reasonable limits prescribe the class of cases in which appeals may be taken.—Lake Erie & W. R. Co. v. Watkins, Ind., 62 N. E. Rep. 443.

29. CONSTITUTIONAL LAW — Requiring Bicycles to Carry Light.—An ordinance requiring bicycles on the street after dark to carry a light was not in contravention of Const. U. S. art. 14, § 1.—City of Des Moines v. Keller, Iowa, 88 N. W. Rep. 827.

30. CONSTITUTIONAL LAW—Right of Infants to Appeal.—Act March 16, 1899, § 2, amending Sand. & H. Dig. § 1027, is unconstitutional in so far as it deprives infants of the right to appeal from a judgment existing against them at the passage of the act.—Rankin v. Schofield, Ark., 66 S. W. Rep. 197.

31. CONTINUANCE—Witnesses Residing Outside the State.—A continuance will not be granted by reason of the absence of witnesses residing outside the state, though such witnesses have promised to appear and testify.—Yori v. Cohn, Nev., 67 Pac. Rep. 295.

32. CORPORATIONS — Collections of Unpaid Subscriptions.—Unpaid subscriptions to the capital stock of an insolvent corporation are required to be collected by its receiver.—Campbell v. Chapman, Miss., 31 South. Rep. 101.

33. CORPORATIONS—Set-Off by Stockholder Against Statutory Liability.—Under Acts 1888, ch. 294, a stockholder of a corporation, in an action against him to establish his statutory liability, can set off a debt owing to him by the corporation.—Cahill v. Original Big Gun Beneficial & Pleasure Assn., Md., 50 Atl. Rep. 1044.

34. CORPORATIONS—Suit Against Certain Officers for Diverting Assets.—A suit against a corporation, making certain officers, charged with fraudulently diverting its assets, parties, need not make all the alleged wrongdoers parties.—Morrison v. Blue Star Nav. Co., Wash., 67 Pac. Rep. 244.

35. COUNTIES—Duty to Present Claims.—Rev. St. art. 790, prohibiting suit against a county, unless the claim on which suit is founded shall have first been presented to the commissioner's court for allowance, has no application to an action of trespass to try title against the county.—Bowie County v. Powell, Tex., 66 S. W. Rep. 237.

36. CREDITORS' SUIT— Allegations of Petition.—A creditors' bill need not state that it is in behalf of all the creditors, though it divulges that there are other creditors besides plaintiff.—Morrison v. Blue Star Nav. Co., Wash., 67 Pac. Rep. 244.

37. CRIMINAL EVIDENCE—Letter Illegally Obtained as Evidence.—The introduction in evidence by the state, in a prosecution for larceny, of a letter illegally taken from the person of a defendant by an officer in serving a search warrant, is a violation of Declaration of Rights, art. 10.—State v. Slamon, Vt., 50 Atl. Rep. 1097.

38. DAMAGES—Loss of Left Eye.—$2 500 damages for loss of left eye and serious physicial suffering held not excessive.—Van Camp Hardware & Iron Co. v. O'Brien, Ind., 62 N. E. Rep. 464.

39. DAMAGES—Right to Punitive Damages.—An instruction that intentional doing of an unlawful act would entitle plaintiff to punitive damages held erroneous.—Kibler v. Southern Ry., S. Car., 40 S. E. Rep. 556.

40. DEATH—Proper Parties to Sue.—Under Code, §§ 3443-3445, the right to sue for the wrongful killing of a person is given exclusively to the personal representative of such person, deceased's widow and children having the right to share in the recovery, freed from creditors' claims, as provided in section 3813.—Major v. Burlington, C. R. & N. Ry. Co., Iowa, 88 N. W. Rep. 815.

41. DEEDS—On Consideration of Void Marriage.—Where a married man, representing himself as single, married a woman and obtained from her a deed of her property without consideration, a finding that such deed was fraudulently obtained is justified.—Hodges v. Hodges, Tex., 66 S. W. Rep. 239.

42. DESCENT AND DISTRIBUTION—Recovery of Funds Due Ancestor.—A complaint, in an action by an heir to recover funds due his ancestor, which alleged that the ancestor died leaving no debts, held insufficient on demurrer, as failing to show that debts accruing after the ancestor's death had been paid.—Hall v. Brownlee, Ind., 62 N. E. Rep. 457.

43. DISMISSAL AND NONSUIT—Affected by Statements in Affidavit.—The action of the court on a motion for nonsuit cannot be affected by statements made in an affidavit for an attachment, where such affidavit has not been offered in evidence.—Brophy v. Downey, Mont., 88 N. W. Rep. 312.

44. DISMISSAL AND NONSUIT—Joint Tort Feasors.—In an action against two defendants as joint tort feasors, a nonsuit cannot be entered as to one and judgment be entered against the other.—Hart v. Allegheny County Light Co., Pa., 50 Atl. Rep. 1010.

45. DISTRICT AND PROSECUTING ATTORNEYS—Appointment of Special Attorney.—A district judge has authority to appoint an attorney in the place of the district attorney in advising a special grand jury called to investigate alleged offenses in the administration of justice in which the district attorney may be involved.—People v. District Court of Second Judicial District, Colo., 66 Pac. Rep. 896.

46. DIVORCE—Attacking Decrees.—Decree of divorce rendered in another state may be attacked on questions of jurisdiction, among which is good faith as to acquisition of domicile.—Succession of Benton, La., 31 South. Rep. 123.

47. DURESS—Lack of Consideration.—Evidence that the maker of a note was of feeble mind, and drank to excess, and was living with the payee in illicit relations, was admissible on the question of lack of consideration.—Ellis v. Watkins' Estate, Vt., 50 Atl. Rep. 1105.

48. EJECTMENT—Resurvey After Trial.—On the hearing for the issuance of an *alias* writ of possession in ejectment, evidence of a resurvey made after the trial held admissible, though the findings and judgment did not require the same.—Dutra v. Pereira, Cal., 67 Pac. Rep. 281.

49. ELECTIONS—Giving City Council Power to Decide Election Contests.—The provision of Seattle Charter, art. 18, § 9, that the council shall decide all cases of contested election, are not authorized by Const. art. 11, § 10, nor by any legislative act, and hence are void.—State v. Weir, Wash., 67 Pac. Rep. 226.

50. ELECTION OF REMEDIES—Execution on Deficiency Judgment in Foreclosure.—Issuance of execution on a deficiency judgment in foreclosure held an election to pursue the legal remedy, and to estop the mortgagee from setting up an equitable interest in the land levied on under execution.—Harding v. Atlantic Trust Co., Wash., 67 Pac. Rep. 222.

51. ELECTRICITY—Broken Wires.—Where defendant permitted a broken wire on one of their electric light poles to become connected with an electric wire and charged with a dangerous current, it was immaterial whether such broken wire belonged to them or not.—Wehner v. Lagerfelt, Tex., 66 S. W. Rep. 221.

52. ESTOPPEL—Denying Consideration After Receiving Benefit.—A creditor, receiving the benefit of a transfer of the accounts of the debtor under a contract releasing the guarantors of the debtor, cannot deny such consideration in an action against the guarantors.—Martin v. Rotan Grocery Co., Tex., 66 S. W. Rep. 212.

53. ESTOPPEL—Essentials of Estoppel by Conduct.—It is an essential to an estoppel by conduct that the party claiming to be influenced should not only be destitute of information as to the matter in controversy, but also without means of acquiring such information.—Atkinson v. Plum, W. Va., 40 S. E. Rep. 587.

54. EVIDENCE—Admissions in Original Petition.—Where an action is tried on amended petition, admissions in original petition held erroneously excluded, though it was not verified.—First Nat. Bank v. Watson, Tex., 66 S. W. Rep. 232.

55. EVIDENCE—Coffin—Plate as Evidence of Age.—In action on life policy, held error to admit in evidence coffin plate, purporting to give the age of the insured. Dinan v. Supreme Council Catholic Mut. Ben. Assn., Pa., 50 Atl. Rep. 999.

56. EVIDENCE—Declarations of Motorman.—In action for injuries to child an street car track, declarations by motorman while his car was on the body of the child are admissible as part of the *res gestae*.—Sample v. Consolidated Light & Ry. Co., W. Va., 40 S. E. Rep. 597.

57. EVIDENCE—Evidence of City Ordinances.—Under Rev. St. arts. 558, 559, a book entitled "Revised City Ordinances" published by a city council and containing all the ordinances then in force, is admissible to prove the contents of one of such ordinances.—San Antonio & A. P. Ry. Co. v. Gray, Tex., 66 S. W. Rep. 229.

58. EVIDENCE—Expert on Electricity.—A physician, who has no knowledge as to the effect of electricity on the human system, except from books, and is not an expert, held not competent to give an opinion thereon.—Wehner v. Lagerfelt, Tex., 66 S. W. Rep. 221.

59. EXCHANGE OF PROPERTY—Remedies for Breach.—Upon breach of a contract of exchange of property, an action may be maintained for conversion of the property traded for, as well as on the contract itself.—Russell v. Phelps, Vt., 50 Atl. Rep. 1101.

60. EXECUTORS AND ADMINISTRATORS—Attorney's Fees and Expenses.—Fees of attorneys and expenses of litigation between heirs will not constitute charges against the succession.—Succession of Benton, La., 31 South. Rep. 123.

61. EXECUTORS AND ADMINISTRATORS—Proof of Claim of Administrator.—The administratrix with the will annexed was not entitled to the allowance of a claim asserted by her against testatrix until she had filed her affidavit, together with that of some one else, proving the claim.—Hood v. Maxwell, Ky., 66 S. W. Rep. 276.

62. EXECUTORS AND ADMINISTRATORS—Sale of Land to Pay Debts.—Lands of intestate descend to his heirs, subject to payment of debts, but cannot be sold to pay costs of administration alone.—Carr v. Hull, Ohio, 62 N. E. Rep. 439.

63. EXEMPTIONS—Tools of Trade.—A single man, who is a land, loan, and insurance agent, is not entitled to a buggy and harness exempt from execution as tools and apparatus belonging to his trade and profession.—Cates v. McClure, Tex., 66 S. W. Rep. 224.

64. FALSE IMPRISONMENT—Railroad Sending Injured Person to Hospital.—Where the crew of a train which has run over a boy removed him to a city hospital from

a house near at hand, there is no liability as for false imprisonment.—Ollett v. Pittsburg, C., C. & St. L. Ry. Co., Pa., 50 Atl. Rep. 1011.

65. FIXTURES — Machinery.—Machinery placed on lots by a vendee, which may be removed without injury to the realty, does not become a part thereof as against one having a lien from the purchase of vendor's lien notes.—Mundine v. Pauls, Tex., 66 S. W. Rep. 254.

66. FRAUDS, STATUTE OF—Guarantying Debt of Another.—Memorandum of collateral agreement to guaranty debt of another, requiring parol evidence to explain it, held insufficient under the statute of frauds.—Ward v. Hasbrouck, N. Y., 62 N. E. Rep. 434.

67. FRAUDS, STATUTE OF—Hiring.—A verbal contract of hiring for more than one year held void under the statute of frauds.—Lally v. Crookston Lumber Co., Minn., 88 N. W. Rep. 846.

68. FRAUDS, STATUTE OF — Leases.—Ballinger's Ann. Codes & St. § 4568, does not change the rule that leases to be performed within one year are not within the statute of frauds.—Ward v. Hinckley, Wash., 67 Pac. Rep. 220.

69. FRAUDS, STATUTE OF — Sale of Growing Trees.—A parol sale of growing trees, treated as an interest in realty, is within the statute of frauds.—Garner v. Mahoney, Iowa, 88 N. W. Rep. 828.

70. FRAUDULENT CONVEYANCES—Decreeing Sale Subject to Liens.—In a suit to set aside a fraudulent charge on land, it is reversible error to decree a sale of the land subject to prior liens thereon.—Dent v. Pickens, W. Va., 40 S. E. Rep. 572.

71. FRAUDULENT CONVEYANCES—Gift to Wife.—A gift by a husband to his wife cannot be attacked by his creditors, when he retains property sufficient to pay his debts, though he afterwards becomes insolvent.—Deering v. Holcomb, Wash., 67 Pac. Rep. 240.

72. FRAUDULENT CONVEYANCES — Purchase by Wife With Husband's Money.—A deed to a wife of land bought with her insolvent husband's money is fraudulent in law against an existing and prior creditor of the husband, and the land is subject to sale for his debt.—Halstead v. Mustion, Mo., 66 S. W. Rep. 258.

73. GARNISHMENT — Extent of Lien.—A plaintiff in garnishment, having followed the steps pointed out in Rev. St. 1899, § 388, while not obtaining a clear lien on specific property in hands of garnishee, held to have obtained a lien giving him a right to hold the garnishee responsible for its value.—Marx v. Hart, Mo., 66 S. W. Rep. 260.

74. GUARDIAN AND WARD — Appeals from Guardian's Compromise.—A compromise judgment, to which a guardian is a party, held not to preclude an appeal therefrom by the ward on attaining his majority.—Rankin v. Schofield, Ark., 66 S. W. Rep. 197.

75. HABEAS CORPUS—Confinement Under New Information.—Writ of *habeas corpus* will be denied, where defendant is confined under conviction on a new information, filed under order of court sustaining demurrer to former information and granting leave to file a new one.—*In re* Pierce, Idaho, 67 Pac. Rep. 316.

76. HIGHWAYS — Long User.—A road which has been used by the public for more than 20 years, and as far back as the memory of the witnesses run, must be regarded as a public highway.—Witt v. Hughes, Ky., 67 Pac. Rep. 281.

77. HIGHWAYS—Removing Building Without Owner's Consent.—Under Code, §§ 1487, 1493, 1495, the board of supervisors held justified in ordering a road to be opened, regardless of an objection that it would cause a building to be removed without the owner's consent.—Stronsky v. Hickman, Iowa, 88 N. W. Rep. 825.

78. HOMESTEAD—Property Purchased With Money Borrowed on Homestead.—Under Code, § 2981, property purchased with money borrowed on security of a homestead held not to be itself a homestead.—Bolinger v. Galloway, Iowa, 88 N. W. Rep. 831.

79. HOMESTEAD—Right of Husband to Mortgage.—Under Rev. Laws 1880, the sole deed of a husband mortgaging the homestead is void, and cannot be rendered effective by the subsequent death of his wife.—Martin v. Harrington, Vt., 50 Atl. Rep. 1074.

80. HOMICIDE — Evidence of Other Assaults.—Evidence of an assault by defendant on his wife and mother-in-law, shortly before the murder of his brother-in-law, held admissible in a prosecution for the homicide.—State v. Eastwood, Vt., 50 Atl. Rep. 1077.

81. HUSBAND AND WIFE—Liability for Torts of Wife.—Under V. S. § 2648, a married man is not liable for the torts of his wife committed by his direction, when the substantive basis thereof is a contract of the wife regarding her separate estate.—Russell v. Phelps, Vt., 50 Atl. Rep. 1101.

82. HUSBAND AND WIFE—Purchaser of Community Property as Innocent Purchaser.—Purchaser of community property from surviving wife held to be an innocent purchaser as to one-half only.—Burleson v. Alvis, Tex., 67 Pac. Rep. 235.

83. INDICTMENT AND INFORMATION — Meaning of Words "Or Otherwise."—Indictment under V. S. § 5128, for conducting a bucket shop for pretended sales "either on margins or otherwise," held not defective for failure to explain the words "either on margins or otherwise."—State v. Corcoran, Vt., 50 Atl. Rep. 1110.

84. INDICTMENT AND INFORMATION — Separate Indictments.—The offenses of attempting to intimidate a person into leaving his home and employment, if both are intended to be charged, should be alleged in separate indictments or in separate counts.—Breeland v. State, Miss., 31 South. Rep. 104.

85. INJUNCTION — Preventing Collection of Fine.—Injunction is not the proper remedy to prevent collection of a fine, prior to judgment.—Kansas City S. Ry. Co. v. Railroad Commission of Louisiana, La., 31 South. Rep. 131.

86. JUDGES — Subsequent Judge Reversing Prior Judge.—Action of judge in sustaining a defense held insufficient by his predecessor held not erroneous, as an unwarranted revision of the former decision.—Shephard v. Gove, Wash., 67 Pac. Rep. 256.

87. JUDGMENT—Amending Record to Show a Tender.—In absence of showing that a tender, under V. S. § 1691, was insisted on at the trial, mistake in failing to do so cannot be corrected upon petition to amend the record or docket entry.—Davis v. Nelson's Estate, Vt., 50 Atl. Rep. 1094.

88. JUDGMENT — Collateral Attack.—Where, in proceedings in which land was attached, the sufficiency of the return of the writ of attachment was determined, the judgment could not be questioned in collateral proceedings between the debtor and the purchaser under an execution in the attachment suit.—Schlosser v. Beemer, Oreg., 67 Pac. Rep. 299.

89. JUDGMENT — Vacating Decree.—An order vacating a decree, made at the same term, but more than three days after entry of such decree, without notice to adverse party, is invalid.—Ellis v. Remley, Iowa, 88 N. W. Rep. 819.

90. JUDICIAL SALES—Reversal of Decree of Sales.—The reversal of an erroneous decree of sale cannot affect title of purchasers at such sale, strangers to the suit.—Klapneck v. Keltz, W. Va., 40 S. E. Rep. 570.

91. JURY—Disqualification Discovered After Trial.—Where defendant failed to question a juror as to his ability to read or write, the discovery after the trial that he could not read or write or understand the English language is not sufficient for setting aside the verdict.—San Antonio & A. P. Ry. Co. v. Gray, Tex., 66 S. W. Rep. 229.

92. JURY — Exclusion After Challenges are Exhausted.—The exclusion of a juror, disqualified under Rev. St. art. 3141, and the selection of an unobjectionable juror, held not error though the parties may have

exhausted their challenges.—Mundane v. Pauls, Tex., 66 S. W. Rep. 254.

93. LANDLORD AND TENANT — Crops of Cotton on Shares.—Where a crop of cotton is raised on land rented on condition that the landlord shall receive one-half the crop, he is entitled to one half the cotton seed as well as to one-half the lint.—McBride v. Puckett, Tex., 66 S. W. Rep. 242.

94. LANDLORD AND TENANT—Holding Over Without Consent.—Where a tenant for a year holds over without the consent of the landlord after his term, the landlord has the option to hold the tenant liable as a tenant for another year.—Alleman v. Vink, Ind., 62 N. E. Rep. 461.

95. LANDLORD AND TENANT—Interest of Landlord in Lease to Recover Possession.—A landlord who has executed leases to third persons, giving them the right of possession to the premises, has sufficient interest in the possession to maintain an action to recover it from a former tenant.—Schreiner v. Stanton, Wash., 67 Pac. Rep. 219.

96. LANDLORD AND TENANT — Renting on Shares.—A contract between a landowner and another for the cultivation of land on shares held to create the relation of landlord and tenant.—Neal v. Brandon, Ark., 66 S. W. Rep. 200.

97. LIBEL AND SLANDER — Ordinary Meaning of Words.—In an action for slander, the words complained of are presumed to have been used in their ordinary meaning, and the burden is on defendant to show that they were used and understood differently. —Emerson v. Miller, Iowa, 88 N. W. Rep. 803.

98. LIFE INSURANCE — Warranties.—Where an applicant for a life policy stipulates as to the truth of statements made, there is a breach of warranty if his age be not as given in the application.—Dinan v. Supreme Council Catholic Mut. Ben. Assn., Pa., 50 Atl. Rep. 999.

99. LIMITATIONS — Failure of Attorney to Commence Suit.—The act of an attorney in failing to commence a suit to set aside a fraudulent conveyance through friendship to the grantee held not to prevent the action from being barred within three years, under 2 Ballinger's Ann. Codes & St. § 4800.—Deering v. Holcomb, Wash., 67 Pac. Rep. 240.

100. LIMITATION OF ACTIONS—Absence of Mortgagor from State.—Absence of a mortgagor from the state will not prevent limitations running in favor of his grantee, who is not obligated to pay the debt.—George v. Butler, Wash., 67 Pac. Rep. 263.

101. LIMITATION OF ACTIONS—Fraud.—Limitations as to a right to cancel a deed for fraud do not commence to run until discovery of the fraud.—Hodges v. Hodges, Tex., 66 S. W. Rep. 239.

102. LIMITATION OF ACTIONS—Partial Payment by Mortgagor.—A partial payment by the mortgagor of a past-due mortgage debt will not stop the running of limitations as against an execution purchaser of the mortgaged premises.—Raymond v. Bales, Wash., 67 Pac. Rep. 269.

103. LIMITATION OF ACTIONS—Persons of Unsound Mind.—The deed of a person of unsound mind being void, the 10-year limitation does not apply to an action to set aside such a deed.—Spicer v. Holbrook, Ky., 66 S. W. Rep. 180.

104. LIMITATION OF ACTIONS—Right to Foreclose Where Mortgagor is Absent from State.—Where a mortgagor sells the property and is absent from the state, and the subsequent purchaser does not record the deed, limitations do not run against the right to foreclose.—Denny v. Beeman, Wash., 67 Pac. Rep. 268.

105. LIMITATION OF ACTIONS—Specific Performance.—Statute of limitations held not to run against the right of action of a vendee of land for specific performance of the contract of sale while he is in possession.—Fleishman v. Woods, Cal., 67 Pac. Rep. 276.

106. MALICIOUS PROSECUTION—Defenses.—The defendant husband, who instituted the prosecution, should have been permitted to show certain other thefts, and to state the information he had received before instituting the prosecution.—O'Daniel v. Smith, Ky., 66 S. W. Rep. 284.

107. MANDAMUS—Compelling Sheriff to Return Execution.—A sheriff will not be compelled by *mandamus* to return an execution which he has been instructed by the court to withhold till the termination of another case.—State v. Hartman, Wash., 67 Pac. Rep. 223.

108. MANDAMUS—Controlling Auditor in Letting Contracts.—The action of the county in awarding a contract for the construction of a ditch, under Code, §§ 1943, 1944, is a judicial act, which cannot be controlled by *mandamus*.—Vincent v. Ellis, Iowa, 88 N. W. Rep. 836.

109. MARRIAGE—Annulment by Third Parties.—After second marriage had been contracted, those who for years recognized its validity held estopped to have it decreed void.—Succession of Benton, La., 31 South. Rep. 123.

110. MASTER AND SERVANT—Assumption of Risk.—A bridge builder, engaged in repairing a bridge, assumed the risk of the danger necessarily incident to such work.—Daniels v. Covington & C. El. R. & Transfer & Bridge Co., Ky., 66 S. W. Rep. 187.

111. MASTER AND SERVANT—Assumption of Risk.—A workman injured in taking down an electric wire held to have assumed the risk in performing the work without the use of rubber gloves or boards.—Wagner v. City of Portland, Oreg., 67 Pac. Rep. 800.

112. MASTER AND SERVANT—Assumption of Risk.—A servant suddenly called to perform a service in an unusual manner held not chargeable with negligence in not having ascertained what dangers were incident thereto.—Waxahachie Cotton Oil Co. v. McLain, Tex., 66 S. W. Rep. 226.

113. MASTER AND SERVANT—Failure to Obey Rules.—In an action for injury to an employee held, that it was not error to refuse to charge that a failure of plaintiff to obey the rules of the company was negligence *per se*.—San Antonio & A. P. Ry. Co. v. Connell, Tex., 66 S. W. Rep. 246.

114. MASTER AND SERVANT—Fellow Servants.—Workman to whom was confided the duty of keeping a mine in a safe condition, held not a fellow servant with an injured miner.—Cushman v. Carbondale Fuel Co., Iowa, 88 N. W. Rep. 817.

115. MASTER AND SERVANT—Liability for Servant's Shooting Customer.—The proprietor of an eating house is not responsible for the shooting by its agent of a patron, where the agent was not acting in any matter relating to his duties.—Lytle v. Crescent News & Hotel Co., Tex., 66 S. W. Rep. 240.

116. MASTER AND SERVANT — Superintendent a Vice Principal.—Superintendent of men employed in the construction of a bridge held a vice principal, and not a fellow servant of a laborer engaged in the work.—Brennan v. Berlin Iron Bridge Co., Conn., 50 Atl. Rep. 1030.

117. MECHANICS' LIENS—Filing Lien.—Where a subcontractor files a statement and serves notice on the owner, as provided by Code, § 3094, after the contractor has been paid, except for extra work, such subcontractor is entitled to a lien for the amount due him, not exceeding the sum so owing to the contractor.—Shope v. Mitchell, Iowa, 88 N. W. Rep. 813.

118. MORTGAGES—Constructive Notice to Subsequent Mortgagee.—The possession of leased premises by a tenant is constructive notice to a subsequent mortgagee and his assigns of the tenant's legal and equitable rights under his lease.—Allen v. Gates, Vt., 50 Atl. Rep. 1092.

119. MORTGAGES—Powers of Trustee.—Where a trust deed to a guardian of certain minor heirs empowered him to sell, such power did not pass to his successor as guardian.—Gillaspie v. Murray, Tex., 66 S. W. Rep. 252.

120. MORTGAGES — Priority Between Subsequent Mortgagees.—Where one releases a deed of trust, and takes a new one for his debt, a lienor subsequent to the first deed of trust takes priority over the second deed.—Atkinson v. Plum, W. Va., 40 S. E. Rep. 587.

121. MORTGAGES—Putting Notes in Judgment.—Placing in judgment of mortgage notes is but another form of evidence of the debt, and does not extinguish the right of action on the mortgage.—Hanna v. Kasson, Wash., 67 Pac. Rep. 271.

122. MORTGAGES—Rescinding for Inadequacy of Price.—Mere inadequacy of price held not to show fraud in a purchase which would justify a rescission.—Opie v. Pacific Inv. Co., Wash., 67 Pac. Rep. 231.

123. MUNICIPAL CORPORATIONS—Crossing a Street at Wrong Place.—Crossing a street and stepping on a sidewalk at a place other than a crossing was not negligence *per se*.—Bell v. Town of Clarion, Iowa, 88 N. W. Rep. 824.

124. MUNICIPAL CORPORATIONS—Regrading Street.—The right to damages done real estate by the regrading of a street is personal, and will not pass by a subsequent sale of the premises under foreclosure.—*In re* City of Seattle, Wash., 67 Pac. Rep. 250.

125. MUNICIPAL CORPORATIONS — Repairing Fire Alarm System.—A city engaged in the legal duty of repairing its fire alarm system in its corporate capacity held liable for injuries received by a workman therein.—Wagner v. City of Portland, Oreg., 67 Pac. Rep. 300.

126. NAMES—Difference in Spelling.—Difference in spelling of a name in an indictment for forgery of warrants and that appearing on a warrant introduced in evidence held immaterial, as *idem sonans*.—Leath v. State, Ala., 31 South. Rep. 108.

127. NEGLIGENCE — Contributory Negligence in Attempting to Save Life.—Where a father, seeing his two year old child on a railroad track in front of a rapidly advancing train, runs on the track in an attempt to save it, he is not a trespasser on the track.—San Antonio & A. P. Ry. Co. v. Gray, Tex., 66 S. W. Rep. 229.

128. NEGLIGENCE—Failure to Look and Listen.—Failure of plaintiff's decedent to look in either direction for an approaching street car before stepping on defendant's tracks held not contributory negligence *per se*.—Bass' Admr. v. Norfolk Ry. & Light Co., Va., 40 S. E. Rep. 100.

129. NEGLIGENCE—Look and Listen Rule.—A traveler at a highway railroad crossing held guilty of contributory negligence as a matter of law in not stopping to look and listen.—Cleveland, C., C. & St. L. Ry. Co. v. Heine, Ind., 62 N. E. Rep. 455.

130. NEGLIGENCE—Malpractice of Physicians.—In an action against a physician for malpractice, plaintiff must allege his own freedom from contributory negligence.—Decatur v. Simpson, Iowa, 88 N. W. Rep. 839.

131. NEGLIGENCE—Taking Question of Contributory Negligence from Jury. — Before the court will be justified in taking from the jury a question of contributory negligence, the acts done must be so palpably negligent that there can be no two opinions concerning them.— Burian v. Seattle Electric Co., Wash., 67 Pac. Rep. 214.

132. NOVATION—Assumption of Debt by Defendant.—Assumption by defendant of debt due from third party held not to amount to a payment of the third person's claim against defendant, without payment of debt actually made.—*In re* Lemerise, Vt., 50 Atl. Rep. 1062.

133. NUISANCE—Private Stable.—The erection of a private stable near a church will not be enjoined as a nuisance.—Albany Christian Church v. Wilborn, Ky., 66 S. W. Rep. 285.

134. OFFICERS—Diminishing Salary.—The action of the county commissioners in fixing the salary of the deputy district attorney at one dollar a year held not within Const. art. 5, § 30, forbidding the enactment of a law diminishing the emoluments of a public officer after his election.—Merwin v. Board of Comrs. of Boulder County, Colo., 67 Pac. Rep. 283.

135. OFFICERS — Retention of Salary.—The retention by a *de facto* collector of taxes of the exact amount of the salary, as had been the custom for 20 years, he and the city believing he was *de jure* collector, should be construed as a payment of the salary to him.—Coughlin v. McElroy, Conn., 50 Atl. Rep. 1025.

136. OFFICERS—Right to Fix Salary.—Where the legislature has not prescribed any definite compensation for district attorneys, but has conferred on the county commissioners power to fix their salaries, the courts cannot themselves fix the amount.—Merwin v. Board of Comrs. of Boulder County, Colo., 67 Pac. Rep. 285.

137. PARENT AND CHILD—Right to Wages.—Unless there has been an emancipation, the payment of his wages by an infant to his parents is no consideration for a transfer of land by one of them to him.—Crary v. Hoffman, Iowa, 88 N. W. Rep. 833.

138. PARTIES—Wrong Name.—Where defendant answered and defended without objection that she was not sued by the right name, she cannot object that the judgment is not against the right person.—Schreiner v. Stanton, Wash., 67 Pac. Rep. 219.

139. PARTITION—Claimant Under Invalid Tax Deed.—In a suit for partition by one claiming under an invalid tax deed, defendant may allege in his answer defects in the sale and deed, and ask that the same may be set aside.—Collins v. Sherwood, W. Va., 40 S. E. Rep. 603.

140. PARTNERSHIP — Rule of Accounting.—In determining the accounts of each partner, where the firm is composed of two members, and one has taken all the assets and assumed the payment of the debts, each should be credited with what the firm owes him, with what he has agreed to pay, with his capital contributed, and with his share of the profits, and charged with what he owes the firm and with whatever assets he has taken; the balance to show what is due to and from the co-partners.—Koelz v. Brinkman, W. Va., 40 S. E. Rep. 578.

141. PAUPERS—Liability of Town for Support.—A town not liable for the support of a pauper is not rendered liable therefor by voluntarily furnishing such support for a number of years.—Town of Danville v. Town of Hartford, Vt., 50 Atl. Rep. 1082.

142. PAYMENT—Application.—Where the obligor in a note proved a credit, the burden was on plaintiff to show that a part of the amount was paid on some other account.—Hill v. Pettit, Ky., 66 S. W. Rep. 188.

143. PRINCIPAL AND AGENT — Defenses Against Principal Good Against Agent.—In an action by an agent for an undisclosed principal on a contract made by the agent in his own name, any defense good against the principal is available against the agent.—Holden v. Rutland R. Co., Vt , 50 Atl. Rep. 1096.

144. PRINCIPAL AND AGENT — Responsibility of Principal for Agent's Exaction of Usury.—Where principal intrusts agent with money to loan, he is responsible for the agent's unlawful exaction of usury.—Robinson v. Sims, Minn., 88 N. W. Rep. 845.

145. PRINCIPAL AND SURETY—Contractor's Bond to Railroad.—A bond given to a railroad company by contractors erecting buildings for a railway held an indemnity bond to the railroad, and not to give a right of action to the laborers against the sureties on the bond.—National Bank of Cleburne v. Gulf, C. & S. F. Ry. Co., Tex., 66 S. W. Rep. 203.

146. PRINCIPAL AND SURETY — Extension of Time as a Release of Surety.—The act of a creditor of a partnership in extending time to one partner, who has assumed the partnership debts, without the consent of the other, operates to release the latter from liability thereof.—Lezelle v. Miller, Oreg., 67 Pac. Rep. 307.

147. PRINCIPAL AND SURETY—Surety on Note.—A

surety on a note is not a fiduciary to the payee, or under any obligation to disclose to him any facts within his knowledge as to the value of such note or of the security thereof.—Opie v. Pacific Inv. Co., Wash., 67 Pac. Rep. 231.

148. PUBLIC LANDS—Sale of Land Under Forfeited Title.—A sale of land under a forfeited title which does not cover such land is void, and a deed made by virtue thereof is also void, and vests no title in the purchaser.—Bowman v. Dewing, W. Va., 40 S. E. Rep. 576.

149. QUO WARRANTO—Relator Having No Interest.—Where an information in *quo warranto* against a school trustee is presented by one having no interest, the court may refuse to permit it to be filed, and should refuse to remove the respondent.—Deaver v. State, Tex., 66 S. W. Rep. 256.

150. RAILROADS — Ejecting Trespasser. — Where plaintiff was injured by being forcibly ejected from a rapidly moving train, the fact that he was a trespasser on such train does not constitute contributory negligence, which deprives him of remedy.—Johnson v. Chicago, St. P., M. & O. Ry. Co., Iowa, 88 N. W. Rep. 811.

151. RAILROADS—Frightening Children by Blowing Off Steam.—Where a railroad engineer blows off steam to frighten children, and a child falls and breaks a leg, the company is liable.—Alsever v. Minneapolis & St. L. R. Co., Iowa, 88 N. W. Rep. 841.

152. REGISTRATION — Leaving Mortgage in Clerk's Office.—Leaving a mortgage covering both realty and personalty in the town clerk's office for record held no notice of its existence as a real estate mortgage, in absence of intent to record it as such.—Hunt v. Allen, Vt., 50 Atl. Rep. 1103.

153. RELIGIOUS SOCIETIES — Appeal from Expulsion of Members.—Where the majority had control by the terms of the organization, and there was no right of appeal from their decision, their action in expelling the minority from membership is binding on the courts.—Bennett v. Morgan, Ky., 66 S. W. Rep. 287.

154. REPLEVIN — Effect of Traverse.—The traverse of a plea and notice in replevin for impounded cattle held to put in issue the legality of the detention, and not merely whether or not defendant was pound keeper.—Farrar v. Bell, Vt., 50 Atl. Rep. 1107.

155. SALES—Non-Delivery of Bill of Sale.—The nondelivery of a bill of sale of property sold on condition that the title should not pass until the delivery of the bill of sale is not a defense to an action for the purchase price.—Yori v. Cohn, Nev., 67 Pac. Rep. 212.

156. SPECIFIC PERFORMANCE—Modification of Contracts.—Where contract to convey by warranty deed is modified, so as to require deed satisfactory to third person named by purchaser, specific performance of original agreement cannot be enforced.—Smith v. Hogle, Iowa, 88 N. W. Rep. 820.

157. STREET RAILROADS — Care as to Children.—Where a motorman in charge of an electric car comes where he has reason to expect children at play, he must exercise a high degree of watchfulness in the operation of the car.—Sample v. Consolidated Light & Ry. Co., W. Va., 40 S. E. Rep. 597.

158. TENDER — Refusal to Accept Tender.—A vendor is not liable for damages for his refusal to release his lien on a tender by the purchaser, where the accounts between them were so complicated that even the court, with the aid of a commissioner, had difficulty in adjusting them.—Hill v. Pettit, Ky., 66 S. W. Rep. 188.

159. TORTS—Inducing One to Break His Contract.—Where one wantonly and maliciously induces a person to violate his contract with a third person, to the latter's injury, it is actionable.—West Virginia Transp. Co. v. Standard Oil Co., W. Va., 40 S. E. Rep. 591.

160. TRESPASS TO TRY TITLE—Justification by Condemnation.—Where a county, sued in trespass to try title, justifies its entry and claim by virtue of a condemnation proceeding, proof of service of notice therein is admissible without special proceedings.—Bowie County v. Powell, Tex., 66 S. W. Rep. 237.

161. TRUSTS—Resulting Trusts in Cases of Fraud.—A party who, through fraud and connivance with an executrix, procured a decree of the probate court whereby he received a portion of the estate devised to testator's infant children, held to hold title to such estate as trustee for such children.—Sohler v. Sohler, Cal., 67 Pac. Rep. 282.

162. USURY — Extension of Mortgage.—Contract for extension of mortgage to pay sum in excess of interest held usurious.—Gantz v. Lancaster, N. Y., 62 N. E. Rep. 413.

163. VENDOR AND PURCHASER—Notice of Unrecorded Mortgage.—On an issue whether a grantee of land had notice of a prior unrecorded mortgage, the burden of showing such notice is on one claiming under the mortgage.—Walter v. Brown, Iowa, 88 N. W. Rep. 832.

164. WATER AND WATER COURSES—Proof of Interference with Waters for Irrigation.—In a suit to enjoin interference with waters appropriated for irrigation, failure of plaintiff to furnish satisfactory proof of the amount of water required by his lands will not defeat his remedy, but the case will be remanded for further proof.—Longmire v. Smith, Wash., 67 Pac. Rep. 246.

165. WILLS—Election of Widow.—Action of widow in taking possession of realty held not to constitute an election to take under the will, under Code, § 3376.—Bailey v. Hughes, Iowa, 88 N. W. Rep. 804.

166. WITNESSES — Cross-Examination.—Defendants should have been permitted by cross-examination to test the accuracy of a statement made by a witness for plaintiff.—O'Daniel v. Smith, Ky., 66 S. W. Rep. 284.

167. WITNESSES — Duty to Inform Witness of His Privilege Against Incrimination.—The grand jury, examining a witness under oath, need not inform the witness of his constitutional privilege to refuse to testify in matters tending to incriminate him.—State v. Comer, Ind., 62 N. E. Rep. 452.

168. WITNESSES — Husband Testifying for Wife.—In replevin by a wife who impounded cattle, the husband was properly allowed to testify to acts done by him as his wife's agent in obtaining a return of the cattle.—Farran v. Bell, Vt., 50 Atl. Rep. 1107.

169. WITNESSES—Privilege Against Incrimination.—The fifth amendment of the federal constitution, providing that witnesses need not incriminate themselves, relates to the federal power, and has no application to the states.—State v. Comer, Ind., 62 N. E. Rep. 452.

170. WITNESSES — Showing Defense on Cross-Examination.—Where, in an action on a note, defendants allege that the note is secured by an unforeclosed mortgage, it is irregular to show such defense by cross examination of plaintiff's witness.—Brophy v. Downey, Mont., 67 Pac. Rep. 312.

171. WITNESSES—Superintendent of Insane Asylum as to Patient.—Admission of the evidence of the superintendent of the insane asylum as to the conduct of a person confined therein pending trial for homicide, as authorized by Acts 1898, No. 48, held not a violation of Declaration of Rights, art. 10.—State v. Eastwood, Vt., 50 Atl. Rep. 1077.

172. WORK AND LABOR — Compensation for Extra Work.—Where the parties to a contract agree to leave to a third party to determine what, if any, compensation is to be allowed for extra work, the determination of such arbitrator thereon is conclusive.—Jones & Hotchkiss Co. v. Davenport, Conn., 50 Atl. Rep. 1028.

173. WORK AND LABOR — Contract for Nursing.—A petition alleging that at request of defendant plaintiff nursed and supported defendant's mother during a certain period of sickness, and that defendant promised to pay therefor, states an enforceable contract.—Montgomery v. Downey, Iowa, 88 N. W. Rep. 810.